



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

Appeal Number: PA113582016

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 31<sup>st</sup> July, 2017**

**Decision & Reasons  
Promulgated  
On 03<sup>rd</sup> August 2017**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**I K R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Mr Paxton of Counsel, Migrant Legal Project (Cardiff)*

*For the Respondent: Mr Kotas, Home Office Presenting Officer*

**DECISION AND REASONS**

1. The appellant is a national of Iraq born on [ ] 1993. He entered the United Kingdom on 7<sup>th</sup> April 2016 and asked for humanitarian protection on the same day. His application was refused on 4<sup>th</sup> October 2016 and he appealed that decision on 17<sup>th</sup> October 2016. His appeal was heard by First-tier Tribunal Judge Powell in Newport on 4<sup>th</sup> January 2017.
2. Counsel explained that the appellant had sought humanitarian protection pursuant to Article 15(c) of the Qualification Directive and made a human rights claim on the basis of his Article 8 private and/or family life with his brother. The issue before the judge was where the appellant originated from. He claimed that his home was in the Ninevah Governorate, a

contested area where conditions triggering Article 15(c) apply. The respondent asserted that the appellant's home was in the Erbil Governorate which is part of the IKR and as such the appellant could be removed directly to Erbil and would not be regarded as an internally displaced person because he would be returning home.

3. The judge records in his determination that he accepts the appellant's evidence that he had never been to the city of Erbil and was uncertain whether he lived in Ninevah or Erbil Governance, although it was clear to the judge that he believed he lived between Mekhmor and Mosul and most closely associated his home with Mosul, rather than Erbil. The judge found that he was satisfied that the judge was telling the truth, even if his account was not as he quite believed it to be.
4. The judge noted that one of the appellant's sisters had the word "*almosel*" in her passport, the word being indicative of Mosul District. However, another sister was recorded in her passport as having been born in Makhmor, Erbil in 1985. The judge heard oral evidence from the appellant's brother, who made a witness statement and confirmed that Garasor was a small village of no more than a dozen or so families. It appears that the appellant's brother was not asked whether the appellant's home was in Ninevah Governorate or not. The judge had the benefit of a report from Professor Christopher Bluth, but stated that he preferred the evidence of the respondent because, while being evidence from information from UN OCHA, as Professor Bluth's evidence was, the expert's evidence was dated December 2010 and the respondent's was dated August, 2014. As a result, the judge found that the Mekhmor District was in the Erbil Governorate which is part of the IKR.
5. Upper Tribunal Judge Kebede granted leave, believing there to arguable merit in the assertion in the grounds that the judge failed to address all the relevant evidence when reaching his conclusions as to the correct governorate for the appellant's home area, including the appellant's sister's passport to which he was referred.
6. Counsel suggested to me that the key to identifying the judge's errors was to consider the direction of travel of the evidence before him. The appellant's brother had made a witness statement from which it could be inferred that the appellant's home was in Ninevah Governorate. He drew my attention the witness statement, but I pointed out to Counsel that having given oral evidence to the First Tier Tribunal Judge, the brother could have indicated one way or the other where the home was but had not. I explained that having read the statement myself, It is certainly not clear which governorate of the home is in. Counsel referred me to the evidence recorded at paragraph 30 of the determination, relating to the appellant's two sisters. K S, was recorded as having been born in Makhmur-Almosel in 1988. The judge found that the word "*almosel*" was indicative of the Mosul District, but I pointed out to him that the

appellant's other sister, W R, was recorded as having been born in Lakhmor, Erbil in 1985.

7. Mr Kotas suggested that the judge had correctly appraised the evidence before him and clearly and carefully analysed it and reached the conclusion which was open to him to make. I reserved my decision.
8. In a very carefully written determination Judge Powell identified the need to make a finding as to where the appellant is from. He pointed out at paragraph 25 of the determination that he was not satisfied that the appellant was from the village of Garasor, because there was sufficient evidence before him to find that the appellant lived in a similarly named, but much smaller village between Mosul and Mekhmor which is not marked on the maps provided to him.
9. When at paragraph 29 the judge found that he was satisfied that the appellant was telling the truth, this was clearly in respect of the fact that the appellant had never been to Erbil and that he believed that he lived between Mekhmor and Mosul and that he most closely associated his home with Mosul rather than Erbil. However the evidence in the form of the appellant's sisters' passports contradicted each other and the evidence of the appellant's brother was far from satisfactory. He was the one person who would have been able to indicate where the appellant came from, but does not appear to have been asked. What he says in his witness statement is not at all clear. One cannot clearly infer from what he has said that the appellant's home is Mosul rather than Erbil.
10. Professor Bluth based his report on information obtained from UN OCHA published in December, 2010. It was because the respondent's information was more recent that he says he preferred it. I believe that the judge was entitled to prefer the report containing more recently published material. He clearly examined all the evidence and explains clearly and cogently why he concluded as he did. He was entitled to do that and in doing so has not made a material error of law in his determination.
11. I find that the judge did not err in reaching his decision and I uphold it. The appellant's appeal is dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

*Richard Chalkley*  
**Upper Tribunal Judge Chalkley**

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

No fee is paid or payable and therefore there can be no fee award.

**Richard Chalkley**  
**Upper Tribunal Judge Chalkley**  
**02/08/2017**

**Date**