



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/10043/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 August 2018

Decision & Reasons Promulgated  
On 04 September 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Janjua, instructed by Morden Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge O'Garro promulgated on 21 November 2018 in which she dismissed his appeal against the decision made on 27 September 2017 to refuse his asylum and protection claim.
2. The applicant was at the time of the hearing a minor. The appellant had lived in Kapran Village, Gowear Town in a Kurdish area. He is a citizen of Iraq of Kurdish origin, and feared ill-treatment on account of his father's involvement with the Ba'ath party under the Saddam Hussein regime. His father died when the appellant was 10

but his mother told him that she feared that he would be targeted by Kurdish forces due to his father past misdeeds; and, as a result of that fear arranged for him to be sent to Europe, leaving Iraq at the age of 15.

3. The respondent accepted the appellant's nationality, age and identity. He also accepted that the father had been involved with the Ba'ath party. Although accepting [40] that he had a subjective fear on return, the respondent concluded that in the light of the background evidence that fear was not well-founded, and on that basis rejected the claim on asylum and humanitarian protection. He also refused the claim on article 8 grounds.
4. Judge O'Garro directed herself [27] that she should bear in mind that the appellant was a minor; and, having considered the objective (sic) evidence [28] found that:
  - (i) the appellant's claim is not credible and that had the father been targeted, his mother would have told him about it [29], and the family would not have been able to live in the home area from 2003 until the father's death in 2003;
  - (ii) the appellant had not shown he would be at risk on return because his father was a member of the Ba'ath party [32];
  - (iii) the appellant's case depends entirely on his credibility and nothing in his personal circumstances gave her reason to believe his claim, and she was not persuaded that he was telling the truth about his claimed fear [33];
  - (iv) as the claim had not been found to be credible [35], it was not shown that his relatives no longer lived in the village where he left them; and, he was still touch with his mother who is still living in Kirkuk [36] and he had not shown he had lost his ID documentation [38];
  - (v) the appellant could get the necessary documentation to return [44] and so could be returned to Iraq, but could not be returned to Baghdad [44]; he could, however safely relocate to the IKR [45];
  - (vi) there was no article 15 (c) risk;
5. Judge O'Garro then dismissed the appeal on all grounds.
6. The appellant sought permission to appeal on the grounds that Judge O'Garro had erred:
  - (i) In not making findings as to the risk to the appellant in his home area which is in a contested area being within Mosul, Ninewah governorate, Judge O'Garro mistakenly believing that the appellant was from the IKR
  - (ii) In failing to take into account that the respondent had accepted the appellant's father had been involved in the Baa'ath party, and his subjective fear;
  - (iii) In failing properly to evaluate the background evidence;
  - (iv) In failing to take into account the appellant's age in assessing the possibility of internal relocation;

7. On 26 June 2018 Upper Tribunal Judge Rimington granted permission on all grounds.
8. In analysing the appellant's claim, Judge O'Garro did not take proper account of the respondent's concessions identified above and, in her findings, went behind them with no justification. It was not the respondent's case that the appellant's claim was not credible, but that there was no objective justification for his fears. It was not the case that what had occurred in the past was disbelieved, it was that the fear was not well-founded. That is not the same as the claim not being credible. The decision thus proceeded on a misconceived basis.
9. This error led Judge O'Garro into making a further error at [33] where she wrongly stated that the case depended on credibility, which it clearly did not, and that in effect she did not believe a word he said. This led to findings as to other facts at [35] based on credibility which are equally flawed.
10. Judge O'Garro was also inconsistent in that, having found that she did not believe the appellant, she then at [44] made findings which were based on the appellant's evidence.
11. In analysing the risk to the appellant on return, it was incumbent on Judge O'Garro to make a finding as to the home area which she did not do. I agree with the submission that she misunderstood the home area to be in the IKR; not all Kurdish area in Iraq are within that specific region. This in turn led to a flawed and unsustainable assessment of the dangers of return.
12. For these reasons, the decision of the First-tier Tribunal involved the making of an error of law and it is set aside. The fact-finding is so tainted by error that none of the findings can be preserved.
13. I have considered whether it is necessary to remit the appeal to the First-tier Tribunal given that, in light of the narrowness of the issues in the light of the concessions made, but I, given that all relevant findings will need to be remade, and as fresh evidence will need to be heard in light of AAH (Iraqi Kurds) Iraq CG [2018] UKUT 00212, I conclude that bearing in mind the relevant guidance, that remittal is appropriate.

### **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the decision to the First-tier Tribunal for the decision to be made afresh. None of the findings made by Judge O'Garro are preserved.
3. The anonymity order made by the First-tier tribunal is preserved.

Signed

Date: 24 August 2018

A handwritten signature in black ink, appearing to read "James Rintoul". The signature is fluid and cursive, with the first name "James" and the last name "Rintoul" clearly distinguishable.

Upper Tribunal Judge Rintoul