



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

Appeal Number: PA/10244/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
On 11 October 2018**

**Decision & Reasons
Promulgated
On 12 November 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Loughran, Loughran & Co Solicitors

For the Respondent: Ms M O'Brian, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Doyle promulgated on 26 March 2018. The appellant's claim is that he was a member of the Iraqi Police Force assigned to the Forestry Environment Department in the Independent Kurdish Region ("IKR"). Whilst on duty, on 30 July 2016, he came across a group of men who were hunting illegally. The men challenged him and a fight broke out. What the appellant did not know is that the leader of the group was Shek Sadradin Shekh Hussain, a powerful member of the PUK. Although the appellant managed to escape, Shek Hussain threatened his life. The

following day a hand grenade was thrown into his house. The appellant reported this to his superior office and who told him that nothing could be done because Shek Hussain was so influential. The appellant left Iraq on 2 August 2016 taking his wife and two children with him and on 17 August 2016 a warrant was issued for the appellant's arrest as a deserter from the Iraqi Police Force.

2. The appellant fears that he would be killed if returned to the PUK as there is now a warrant for his arrest. He is charged with desertion, the penalty for which is death.
3. The respondent did not accept the appellant's case concluding that internal flight was in event a viable alternative to seeking international protection.
4. The judge heard evidence from the appellant found to be credible and concluded that the appellant:-
 - (i) was a police officer working in the Forestry and Environment Department of the police within IKR [12D];
 - (ii) did receive a credible threat; that an attack was made on his house and that he had been charged with desertion [12D];
 - (iii) the existence of the warrant for arrest was indicative of prosecution not persecution [12N] but it did not follow that he faces persecution by the IKR authorities who would be able to protect him, that the arrest warrant having relevance only in considering Articles 2 and 3 of the Human Rights Convention;
 - (iv) could be returned to the IKR where there would be protection for him as soon as he removed himself from a PUK dominated area [12O];
 - (v) was not entitled to humanitarian protection nor was his return a breach of the Human Rights Convention.
5. The appellant sought permission to appeal on the grounds that the judge had erred :
 - (i) in finding that the appellant could safely relocate to a non-PUK dominated area as the arrest warrant was addressed "to all forces of legal enforcement; all forces of the Asayish; all those who receive this arrest warrant - you are authorised and it is your duty to arrest the suspect ..."; and, given that it was addressed to all these areas the appellant simply could not escape the arrest warrant by removing himself from a PUK dominated area as all forces of law enforcement and Asayish have been charged with arresting him;
 - (ii) in failing to note that the charge of desertion had arisen as the result of the appellant fleeing for his life.
6. When the matter came before me, Mrs O'Brien candidly, and properly, conceded that this is an appeal which should have been allowed.

7. The judge accepted that the arrest warrant was correct but does not, in assessing the consequences that flow from that being addressed to all the security forces of the IKR that he would not be safe in a non-PUK dominated area. Indeed, it is likely that he would be arrested on return. Further, the judge appears not to have considered the consequences of the appellant being taken into detention. It follows from the judge's finding that the appellant would be safe in a non-PUK dominated area that he would be at risk in a PUK dominated area. Accordingly, and in the light of the concessions made, I am satisfied that the decision of the First-tier Tribunal should be set aside and remade on the basis that the appellant would be at risk of serious harm on return.
8. It was at the hearing, unclear whether the accepted risk to the appellant of serious ill-treatment was on account of a convention reason. Accordingly, I adjourned the matter to permit submissions on this issue from both parties, the appellant to make submissions within fourteen days, the response from the respondent within fourteen days after that.
9. Having read Ms Loughran's submissions, Mrs O'Brien has formally conceded in an email dated 1 November that the appellant faced persecution on account of imputed political opinion, given that the individual targeting him is a powerful PUK actor. I consider that is so, and is also the reason he was not protected by the state.
10. In the circumstances I am satisfied that the appellant has a well-founded fear of persecution on Refugee Convention grounds, and I allow the appeal on that basis. Similarly, his removal would be in breach of Article 3 of the Human Rights Convention, and I allow the appeal on that grounds also.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the appeal by allowing it on refugee grounds and on human rights grounds.
- (3) In light of the above the appeal on humanitarian protection grounds falls to be dismissed.
- (4) I maintain the anonymity order made by the First-tier Tribunal.

Signed

Date 5 November 2018



Upper Tribunal Judge Rintoul