**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA029712016

**THE IMMIGRATION ACTS**

| **Heard at Newport (Columbus House)** | **Decision & Reasons Promulgated** |
|---|---|
| **On 18 July 2017** | **On 27 July 2017** |

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**
**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**M Q**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Dieu instructed by Crowley & Co, Solicitors
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) we 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.

## Background

2. The appellant is a citizen of Iraq who was born on [ ] 1989. He comes from Mosul and is a Shi'a Muslim of Shabak ethnicity.

3. The appellant claims to have arrived in the United Kingdom on 26 September 2015 when he claimed asylum. On 3 March 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

4. The appellant appealed to the First-tier Tribunal. In a decision promulgated on 13 December 2016, Judge G Clarke dismissed the appellant's appeal on all grounds.

5. The judge did not accept the appellant's account that he had previously been kidnapped in Mosul. For that reason, therefore, the appellant could not succeed in his asylum claim. However, the judge accepted that there was a risk of indiscriminate violence falling within Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC) in his home area. As a result, the judge went on to consider whether the appellant could safely and reasonably internally relocate within Iraq. The judge found that, as had occurred earlier in relation to his family, the appellant would not be permitted to enter Baghdad as he came from Mosul and also that he would not be permitted to relocate to the IKR as he was not Kurdish. However, the judge went on to find that the appellant could safely and reasonably be expected to relocate to the "southern governorates" of Iraq. On that basis, therefore, the appellant could not succeed in his humanitarian protection claim under Art 15(c) of the Qualification Directive.

6. The appellant sought permission to appeal to the Upper Tribunal which was granted by the First-tier Tribunal (Judge Adio) on 17 March 2017.

7. On 30 March 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.

## Discussion

8. Mr Dieu, relied upon the grounds of appeal before us. He submitted that the judge had erred in law in two respects.

9. First, the judge had accepted that the appellant's family had been unable to travel to and live in the southern governorates because ISIS were in control of the surrounding area and, as a result, now lived in a refugee camp between Baghdad and Erbil. It was, therefore, Mr Dieu submitted illogical for the judge to find that the appellant could, on return, relocate to those southern governorates.

10. Secondly, Mr Dieu submitted that, in any event, the respondent had only relied upon the appellant being able to internally relocate to Erbil in the IKR or Baghdad. It was not, therefore, open to the judge to decide the appeal on the basis of internal relocation to an area not relied upon by the respondent.

11. Mr Diwnycz relied upon the rule 24 response and submitted that the judge was entitled to make the finding that he did, namely that the appellant could safely and reasonably relocate to the southern governorates. Further, he submitted that the Secretary of State's decision letter, although stating that it would not be unreasonable to expect the appellant to internally relocate to "Erbil or Baghdad" (see para 66), also concluded that there were "no substantial grounds for believing that there is a real risk of serious harm on return to Iraq" (at para 67) which left open the possibility of internal relocation elsewhere in Iraq.

12. Dealing with the second point first, it is clear from the refusal letter that the respondent was only contending that the appellant could internally relocate to either Erbil in the IKR or to Baghdad. We do not accept that para 67 of the determination, in asserting that there was no real risk of serious harm to the appellant on return to Iraq, was anything other than a statement of the ultimate conclusion of the Secretary of State having rejected the appellant's claim and that he could safely and reasonably internally relocate to either Erbil or Baghdad. Those are the places of relocation referred to in the decision letter at paras 57, 62, 63, 65 and in para 66 where it is stated:

> "Therefore, it is not considered to be unreasonable to expect you to return to Erbil or Baghdad and as such you do not qualify for international protection."

13. It was not, in our judgment, open to the judge to propose an alternative place of relocation not relied upon by the respondent in the decision letter or raised, so far as we can tell (and Mr Diwnycz did not suggest otherwise), by the Secretary of State's representative before the judge. The appellant was, in effect, taken by surprise on this point and not given an opportunity to deal with it at the hearing.

14. Further, in any event, we accept Mr Dieu's submission that the judge's finding that the appellant could safely and reasonably relocate to the southern governorates was wholly inconsistent with his acceptance that the family had been unable to move to the southern area of Iraq because of the presence of ISIS controlling the surrounding area. The judge clearly accepted the appellant's evidence that his family had, as a result, had to live in an IDP camp between Erbil and Baghdad (see paras 63, 64 and 66). There was nothing in the evidence to which our attention was drawn which sought to contradict that accepted evidence that travel to the southern governorates was simply not safe. In those circumstances, there was only one finding which the judge could reasonably reach, namely that the appellant could not safely reach the southern governorates and therefore relocate there on return to Iraq.

15. For these reasons, the judge materially erred in law in finding that the appellant could safely and reasonably internally relocate on return to Iraq.

16. Turning now to remake the decision, the judge's findings that the appellant could not internally relocate to Erbil or Baghdad stand. We also find, based upon the judge's acceptance that the family could not move to the southern governorates because of the presence of ISIS controlling the surrounding area, that the only proper finding available to the judge (and which we ourselves make) was that the appellant could not safely and reasonably relocate to that area in south Iraq.

17. For those reasons, therefore, the appellant has established his claim to humanitarian protection under Art 15(c) of the Qualification Directive.

**Decision**

18. Accordingly, we allow the appellant's appeal to the Upper Tribunal by substituting a decision allowing his appeal on humanitarian protection grounds.

19. The appeal is dismissed on asylum grounds.

20. In the light of our decision, we need say no more about the judge's decision to dismiss the appeal under Art 8 which was not raised before us.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 26 July 2017