



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

Appeal Number: PA/08790/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 June 2017**

**Decision &  
Promulgated  
On 26 June 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**SKH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr I Palmer, of Counsel, instructed by Caveat Solicitors  
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

1. The First-tier Tribunal made an anonymity order. The order remains appropriate as the Appellant is a minor and this is a protection claim.

**Introduction/Background**

2. This is an appeal by the Appellant against a decision of the First-tier Tribunal Judge S Kaler (hereafter “the Judge”) dismissing the appeal of SKH against a decision made on 13 July 2016 refusing his asylum claim. The Judge, however, did allow the appeal contrary to Article 3 of the ECHR. There is no cross-appeal against that decision.
3. The Appellant is a citizen of Iraq born on 1 January 2000. He arrived in the UK on 17 October 2007 and claimed asylum on arrival. He is of Kurdish ethnicity and is a Sunni Muslim from Makhmour - a city that lies between Mosul and Kirkuk.
4. The basis of the Appellant’s claim was: (i) that he feared ISIS who kidnapped his brother and (ii) that he would be a victim of a revenge killing because his family were embroiled in a blood feud. Whilst the Respondent did not dispute that the Appellant had a fear of ISIS, she rejected his claim that he would be a victim of a blood feud. It was the Respondent's view that, in any event, the Appellant could safely return to Kurdistan or Baghdad.

### **The Decision of the First-tier Tribunal**

5. The Judge’s findings of fact can be found at [19]-[29] & her conclusions at [30]-[32] of her Decision. The Judge did not accept the Appellant’s account that he would be the victim of a revenge killing at the hands of his uncles. The Judge concluded however, that (i) the Appellant was at risk of persecution in his home area on account of his Kurdish ethnicity; (ii) he could not be expected to relocate to Kurdistan; (iii) he would not face persecution for a Convention reason in Baghdad, but would be at risk of being subjected to ill-treatment contrary to Article 3 of the ECHR – the Appellant would not be able to obtain documentation, he is an ethnic Kurd, cannot speak Arabic and would be without support - and (iv) the Appellant qualifies for leave to remain on humanitarian protection and human rights grounds.

### **Permission to Appeal**

6. The central premise of the Appellant’s challenge of the Judge’s decision was that given her findings she should have allowed the appeal under the Refugee Convention. Permission to appeal was granted by the First-tier Tribunal on 5 May 2017.

### **Rule 24 Response**

7. The Respondent in her Rule 24 Response did not oppose the appeal and invited the Tribunal to consider whether the Appellant’s appeal should be allowed on asylum grounds.

### **Assessment of Whether there is an Error of Law**

8. At the hearing before me, Mr Wilding on behalf of the Respondent did not oppose the appeal. He sensibly conceded that the decision should be remade allowing the appeal on asylum grounds. I agreed with that course and indicated that a written decision would follow to that effect, which I now give.
9. In light of the concession made by the Respondent I can deal with this appeal relatively swiftly.
10. There is no challenge to the Judge's finding that there is an Article 3 risk in Baghdad. The Judge however plainly erred in law in dismissing the appeal under the Refugee Convention. In finding that there was a real risk of persecution in the Appellant's home area on account of his ethnicity, and that, it was unduly harsh to expect him to relocate to Baghdad, there was only one answer to the question of whether the Appellant was entitled to be recognised as a refugee and that was a resounding - yes. Given the Judge's findings, the fact that there was no risk of persecution in Baghdad for a Convention reason was irrelevant to the question of whether the Appellant is a refugee. The Judge thus materially erred in law in dismissing the appeal on asylum grounds. The Appellant is a refugee.

### **Decision**

The Decision of the First-tier Tribunal dismissing the appeal under the Refugee Convention is set aside as it erred in law. I substitute a Decision allowing the appeal under the Refugee Convention.

### **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 his 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.

Signed

Date: 21 June 2017

Deputy Upper Tribunal Judge Bagral