



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/00570/2014

Appeal Number:

AA/00610/2014
AA/00609/2014
AA/00611/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 25 November 2014**

**Determination
Promulgated
On 10 December 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**MFFAZ
ARHAJ
NMFAZ
MMFAZ
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Hodgetts instructed by McGarvey Immigration and
Asylum Practitioners

For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

Introduction

2. The first appellant is a citizen of Iraq who was born on 1 February 1968. The second, third and fourth appellants, respectively the wife and children of the first appellant, are also citizens of Iraq. They were born on 4 December 1972, 7 August 1998 and 28 August 2000 respectively. They arrived in the United Kingdom from Baghdad on 21 November 2013. The third appellant entered as a Tier 4 (Student) Migrant with leave valid until 18 January 2014. The other appellants entered as her dependents. They claimed asylum on 27 November 2013. On 13 January 2014, the Secretary of State refused the appellants' claims for asylum and made decisions refusing to vary their leave to remain.
3. The appellants appealed to the First-tier Tribunal. In a determination dated 8 March 2014, Judge C J Woolley dismissed the appellants' appeals on asylum and humanitarian protection grounds and under Arts 2, 3 and 8 of the ECHR. Permission to appeal was initially refused by the First-tier Tribunal but on 2 May 2014 the Upper Tribunal (UTJ Storey) granted the appellants permission to appeal.
4. The appeal initially came before me on 9 September 2014. In a decision dated 22 September 2014, I concluded that the First-tier Tribunal's decision to dismiss the appellants' appeal on asylum grounds involved the making of an error of law. I set aside that decision and directed that the appeal should be relisted in the Upper Tribunal in order that the decision could be remade. My reasons are set out in full in my written decision and I do not repeat them here.
5. The appeal subsequently came before me on 25 November 2014.

The Appellants' Claims

6. The appellants' claims for asylum are based on the fact that the second appellant was an academic at the Al-Kindi Medical College in Baghdad. The second appellant (together with her husband and (then) two children) came to the UK in 2008 in order for her to study for a PhD at Plymouth University. She was awarded that degree in July 2013. In October 2013, the family returned to Iraq and the second appellant to her job as a lecturer in Baghdad. She claims that she suffered discrimination and was threatened as she was the only Sunni Muslim in her department which consisted of Shi'a Muslims and the influence of the Shi'a militia, the Al-Mahdi army. She claims that she was unnecessarily searched on

arriving at the University when she first returned and was threatened and, in effect, it was made clear to her that she was not welcome. She feared she would be harmed as a Sunni academic.

7. The appellants claim that, shortly, after her problems in the College began after her return from the UK, on 9 November 2013 their home was targeted at about 5.30 am when shots were fired at their house. They did not see the perpetrators but they heard them and a vehicle speed away and the house had bullet holes in it. The family left to stay with the second appellant's family in Baghdad. The first appellant was arrested by Government forces on 13 November 2013 whilst the family was staying at the house of the second appellant's father. The first appellant was detained and questioned about his links with terrorism. Subsequently he was released after his father-in-law found individuals who were able to mediate with the authorities and establish that he had nothing to do with terrorism.
8. The appellants left Iraq and arrived in the UK on 21 November 2013. The second appellant entered as a Tier 4 student on a visa granted on 9 May 2013 and valid until 18 January 2014. The other appellants entered as her dependents.
9. The appellants fear that they face a risk of persecution or serious ill-treatment based upon the fact that the second appellant is a Sunni Muslim academic who is at real risk of being targeted, together with her family, by Shi'a militia or others on return.

The Hearing

10. At the hearing, Mr Hodgetts who represented the appellant provided me with a subjective and an objective bundle of documents. Those bundles contain updated witness statements from the first and second appellants, an expert report from Dr Fatah dated 18 November 2014 (at pages 50-71 of the subjective bundle) and a number of background documents at pages 52-77 of the objective bundle that were not before the First-tier Tribunal. Mr Richards, who represented the Respondent, indicated that he had no objection to this new evidence being admitted. I considered proper to admit the evidence in the exercise of my discretion under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
11. In addition, I heard oral evidence from the first and second appellants who both adopted their witness statements contained in the subjective bundle. Both representatives made oral submissions and, as will become clear below, the issues I have to decide were substantially narrowed as a result of the submissions made by Mr Richards on behalf of the Respondent.
12. Neither representative relied explicitly upon the country guidance case of HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC). Mr Richards, however, drew my attention to [138] where the Upper Tribunal

recognised the background evidence showed a trend in 2010 of increased targeting of a number of groups in Iraq including “educational professionals”.

The Law

13. The burden of proof is upon the appellants to establish that there is a reasonable likelihood or real risk that if returned to Iraq they would be subject to persecution for a Convention reason or subject to serious ill-treatment contrary to Article 3 of the ECHR or a real risk of death contrary to Article 2 of the ECHR.
14. In relation to internal relocation, para 3390 of the Immigration Rules provides that:
 - “(i). The Secretary of State will not make:
 - (a) A grant of asylum if in part of the country of origin a person would not have a well-founded fear of persecution, and the person can reasonably be expected to stay in that part of the country;
 -
 - (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, while making his decision on whether to grant asylum....., will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
 - (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.”

Discussion and Findings

15. In his submissions, Mr Richards indicated that he did not seek to challenge the truthfulness of the evidence before me. He also noted that a number of the First-tier Tribunal Judge’s findings were preserved.
16. In the light of this, I do not set out the detailed evidence which the second appellant gave orally or the briefer evidence given by the first appellant. I only set it out as necessary, together with the other subjective and background evidence, as necessary to reach my findings in these appeals. I accept what those witnesses said in both their oral and written evidence. The second appellant was, in particular, a most impressive witness and I have no doubt she (and her husband in his brief evidence) was seeking to tell me the truth.
17. The scope of the issues and matters of dispute between the parties were reduced considerably by Mr Richards in his submissions. Having accepted the truthfulness of the witnesses, he accepted that the objective evidence supported the second appellant’s claim that she had encountered hostility at her college where she was the only Sunni lecturer in an otherwise Shi’a

dominated college. Further, he also accepted that it was understandable that the appellants could not identify who had carried out the shooting on 9 November 2013 outside their home. He accepted that, nevertheless, in their minds it would be linked to the other incidents which the second appellant said had occurred shortly before in her college, namely that she had been threatened and treated aggressively including being subject to unwarranted searches on entering the college. Mr Richards accepted that given the evidence, in particular of the second appellant, that there had been no other shootings in their area and that the shooting incident followed on fairly closely from the problems and threats in her workplace that, applying the low standard of proof, it was, in his words, “not an enormous leap of faith” to conclude that the second appellant (and with her family) had been targeted.

18. I agree. I accept the evidence of the first and second appellants but they do not, of course, know who fired upon their house. Mr Richards did not suggest, as had been postulated by the First-tier Tribunal Judge, that the shots came from a near-by checkpoint. The unchallenged evidence of the first and second appellants was that the checkpoint was some distance away.
19. The background evidence shows the targeting of academics in Iraq including shootings and targeting of their homes. The UNHCR *“Eligibility Guidelines for Iraq 2012”* at page 23 (page 37 of the objective bundle) sets out the situation as follows:

“b) Academics

According to various sources, hundreds of professors, teachers and academics have been killed since 2003 and many others have been kidnapped, arrested or threatened. In 2010 and 2011, such attacks have been reported again with higher frequency, and continued also in 2012, including in Al-Anbar, Babel, Baghdad, Diyala, Ninewa, Kirkuk and Salah Al-Din Governorates. In most cases, loss of life has resulted from shootings, often in the victims’ home, or by “sticky bombs” attached to private vehicles. Some academics have been killed after returning to Iraq from abroad.

Students and schoolchildren have also been targeted and in some cases killed and injured in bombings, shootings and abductions. In central and southern Iraq, there are reports that faculty and administrators of schools and universities have been threatened by armed anti-government groups to adapt programmes and activities and promote certain students. Academic institutions have reportedly practiced self-censorship in order to avoid violence.

University personnel are also reported to have been demoted or fired from their employment, often in an arbitrary manner, as part of ongoing “De-Ba-athification” campaigns. “

Likewise, *the US Department of State Report 2012 on Iraq* at page 25 (page 5 of the objective bundle also identifies a continuing targeting of

academics, albeit there are fewer reports than in previous years, as follows:

“There were reports, although fewer than in previous years, of threats by extremists and sectarian militants against schools and universities, urging them to modify activities or favour certain students, or face violence. Academics continued to be targeted in attacks during the year. For example, on July 2, unknown gunmen killed Mohammed Jasim Al-Jubouri, a faculty member at Imam Adham College in Mosul outside his home. Terrorist attacks even targeted elementary schools. On September 24, four children were killed and six injured in a suicide bombing outside an elementary school in Hit. Academics self-censored and educational institutions at times modified their activities accordingly.”

20. The evidence of the continued risk to academics and attacks in 2010-2012 is not, in my judgement, contradicted by the Freedom House Report, *“Freedom in the World 2013- Iraq”* (at page 27 of the objective bundle) when it states:

“Academic institutions operate in a highly politicized and insecure environment. Hundreds of professors were killed during the peak of sectarian and insurgent violence, and many more stopped working or fled the country, though there have been some reports of scholars returning to their jobs following relative security improvements in the last several years.”

21. In his expert report, Dr Fatah deals with the risk to academics in Baghdad in section 5 at paras 47-60. At paras 47-51 he identifies a number of attacks against academics in 2014 as follows:

“47. This section explores the risks to academics in Iraq today, with particular focus on Baghdad, the Al Zandee’s home city.

48. On 17 October 2014, the condemnation on Facebook by Iraqi female university professor, Hana Mohammed al-Baghdadi, of ISIS atrocities in Mosul led to her arrest by that group. She was sentenced to death and beheaded in front of her family (including her children), which was told not to have a funeral for her.

49. 03 October 2014, it was reported that Shiia militia supported by the Iraqi government kidnapped a university lecturer close to his home in southern part of the city of al-Basara. Wamidh Khalid Hamud abducted near to his home in Dur al-Baladiya, and taken to an unknown destination.

50. On 22 May 2014, ISIS members attacked the car of a female university lecturer and a former candidate for the election in the city of Mosul. Ms Faliha Salih was killed in the attack.

51. On 11 May 2014, a university professor was injured in an armed attack on his home in the centre of Baquba, Diyala.”

22. Those incidents, of course, relate to events outside Baghdad. They nevertheless show the general risk to academics throughout Iraq.

23. At para 52, Dr Fatah identifies a specific incident of an attack upon an academic in Baghdad as follows:

“On 03 February 2014, the head of the Iraqi University escaped an assassination attempt in north Baghdad. Usam Hassan al-Atabi escaped as unidentified assailants threw a hand-grenade into his car in the al-Adhamiya Quarter of Baghdad.

24. At para 53 of his report, Dr Fatah sets out in tabular form a number of attacks, often fatal, upon academics including a number of attacks in Baghdad including on 18 May 2014 that an academic from the Al-Nahran University Baghdad was killed at home and on 1 July 2013 a professor at Baghdad’s College of Medicine had a bomb placed under his car. At paras 58-60, Dr Fatah sets out the deaths of academics between 9 April 2004 and 25 September 2012 as follows:

“58. Between 09 April 2004 and 25 September 2012 the Brussels Tribunal recorded the assassinations of 472 Iraqi academics, PhD students, engineers, faculty/department managers. A rough tally of the locations, where it is explicitly stated, show that 179 out of 472 were killed in Baghdad. The Brussels Tribunal records seven female academics killed in that period. Specific mention is made of religion on few occasions: Sunni (three times), Shite (once). The following are annual death tolls tallied from the Brussels Tribunal site.

2012	5
2011	16
2010	13
2009	10
2008	18
2007	64
2006	113
2005	
2004	

59. And from 22 March 2003 to 28 May 2010, the Brussels Tribunal records another 120 deaths of individuals from the rest of Iraq’s education sector (teachers, school principals, students, education officials). 30 of these were killed in Baghdad. 20 of them were women.

60. While these are historical statistics, they are useful in demonstrating how the risk to academics (as well as other particular groups) ebbs and flows according to the general security situation in the country. In

addition they also serve to give some sense of proportion to the risk to female academics and to academics in Baghdad.”

25. At paragraph 61, Dr Fatah concludes that:

“...Academics in many parts of the country, including female academics, could be at risk of targeted violence. Academics in Baghdad specifically, are also targeted.”

26. At paragraph 62, Dr Fatah recognises the difficulty of identifying the perpetrators of such acts as follows:

“It is impossible to state whether this risk is enhanced by the academic in question being a Sunni Muslim, or necessarily whether the risk increases in sync with sectarian tensions. Because the motive for each attack is never given and only rarely hinted at, and the perpetrators are hardly ever known, patterns cannot be detected. Most sources mention the fact that identifying the culprits - even by exploring patterns, victims, etc - is impossible because the victims are mixed (in terms of sect, area of expertise, affiliation with the Baath Party), and the perpetrators were either -broadly identified - Shiia militias and Sunni insurgents, or not identified at all.”

27. Then at para 64, Dr Fatah concludes:

“The evidence does, however, indicate that gunmen attack (would-be) victims in their houses, as well as other places.”

28. Mr Richards did not challenge the contents of Dr Fatah’s report. I have no reason to doubt his recitation of facts or to doubt his opinions are other than genuinely and reasonably held. I accept the contents of his report.

29. In addition, Mr Hodgetts drew my attention to two news reports concerning attacks on academics in Baghdad. At page 68 of the objective bundle, there is a report dated 22 June 2014 of an assassination of a professor of Nuclear Physics at the Al-Mustansyria University who had been executed by militia after detaining him at his home in the Al-Jameaa District in the centre of Baghdad. The second appellant told me in her evidence that she did not personally know this professor but he lived a few streets from her home in the same district in Baghdad.

30. Then, at page 65, in translation, is a news report dated 1 September 2014 of an attempted assassination of the Dean of the second appellant’s college, Dr Al-Mukhtar. He, it is reported, was targeted by a terrorist explosion outside his home as he was leaving to go to college but he was unharmed although his car suffered some damage. As Dr Fatah points out in his report (above), the risk to academics is not restricted to those who are Sunni. Shi’a academics could also be at risk from Sunni insurgents.

31. The background evidence does, in my judgement, show a pattern of risk to academics in Iraq including Baghdad. The attacks can occur at the individuals’ homes. The background evidence is wholly consistent with the appellants’ account of an attack on their home on 9 November 2013

and that the second appellant was targeted because she was an academic. The attack occurred shortly after she had returned to Iraq from the UK and to her college where she had been subject to clear discrimination and adverse treatment because, in my judgement, she is a Sunni Muslim academic who was working in a Shi'a dominated college.

32. Consequently, I accept that there is a real risk that if the second appellant returns to her home area she will be targeted as an academic with a Sunni religious background. That risk is not negated by any suggestion that she could avoid the risk by not returning to work in the Shi'a dominated college. First, given the second appellant's professional commitment to her work, including coming to the United Kingdom and obtaining a PhD from the University of Plymouth which she was awarded in 2013, it would not be reasonable to expect the second appellant not to return to the job which she has held for many years. Secondly, in any event, her past history demonstrates that she is known in her own area as an academic and, in my judgement, she would remain at risk from those who would well know her background. Thirdly, the risk to academics in Baghdad is general and wide-spread. Fourthly, Mr Richards did not suggest that the Iraqi state was in any position to provide a level of protection from insurgents/militias that would meet a reasonable level of protection and obviate the need for international protection.
33. The substance of Mr Richards' submissions was not directed to the issue of whether the appellant had established a real risk in her home area. Instead, he focussed upon her possible internal relocation. Mr Richards accepted that, in the current situation in Iraq and the conflict with ISIS, it was not possible for the appellants to internally relocate outside Baghdad. He did not pursue the point, or rely upon HM and others, that the appellants could internally relocate within the KAR in the north of Iraq. Given the current situation in Iraq and the absence of any evidence that the appellants have any family or friends in the KAR, in my judgement, Mr Richards' approach was entirely realistic and correct. It would simply not be reasonable to expect, or safe for, the appellants to move outside Baghdad.
34. With that in mind, Mr Richards submitted that the appellants could internally relocate within Baghdad. He submitted that the risk to the second appellant was heightened by the fact that she was the only Sunni member of staff at an otherwise Shi'a college. By taking herself outside of that heightened risk category, the risk would be greatly reduced by moving to a different Sunni part of Baghdad and by the family being supported by the first appellant's employment who, I was told, is an engineer. Mr Richards submitted that there was no reason why the second appellant would be at any greater risk than the general Sunni population in Baghdad as a consequence. He accepted that it was not possible to say that the appellants would be "completely safe" but it would mean that there would be no longer any reason for them to be targeted if the second appellant were no longer an academic.

35. Mr Hodgetts submitted that it was a “leap of faith” to say that the appellants would be safe in an unspecified area of Baghdad given that they had previously been targeted. He relied upon the two recent reports of academics being targeted in Baghdad including the Dean of the second appellant’s own college. He relied upon paragraph 67 of Dr Fatah’s report that the appellants would “stand out because of their name or ‘otherness’” and so would be at risk. Mr Hodgetts also relied upon the First-tier Tribunal Judge’s finding that the first appellant had been arrested under the anti-terrorism law because he had been not in his own registered area. The second appellant, Mr Hodgetts submitted remained at risk of being targeted as a terrorist if they move to another area and, even if registration could be obtained, that would necessarily take time. Mr Hodgetts relied upon the expert report which, he submitted identified a risk to Sunni Arabs (see, for example para 32) within Baghdad.
36. Further, Mr Hodgetts submitted that it was not reasonable to expect the appellants to relocate. Although they were both well qualified, he submitted that it would be difficult for the first appellant to obtain employment and he relied upon the expert’s report at paragraph 75 that the chances of the second appellant obtaining employment outside her college should be “regarded as slim”. He relied upon the expert view that recruitment processes were not transparent and, if the appellants “do not have the right connections, accessing employment maybe difficult” (at para 74).
37. In my judgement, the possibility of safe and reasonable (or not ‘unduly harsh’) internal relocation within Baghdad is purely speculative. I have set out above the background evidence and expert report of Dr Fatah in relation to the risk to academics in Iraq including Baghdad. The reach of the militia or others who target academics cannot be restricted to the home area of the appellants in Baghdad. The background evidence shows a wide-spread risk to academics within Baghdad. As I have already found, it would not be reasonable to expect the second appellant to give up her academic life, in particular her current job. It is entirely reasonable for her to continue as an academic and she has worked at the Al-Kindi College since 2002 and her evidence was that, when she requested a transfer, it was refused. There is no real prospect that she would be able to work as a lecturer elsewhere in Baghdad. In any event, being an academic would obviously, bearing in mind her history, present her as a future target for those who seek out to harm academics, and, in the case of Shi’a militia, in particular Sunni academics. The prospect of safely relocating within Baghdad has no evidential foundation. I accept the evidence of the expert that the appellants would “stand out” both because of their name and their “otherness” which would, in my judgement include the fact that the second appellant (together with her family) would have returned from the UK. It was, of course, shortly after her return from the UK last time that the targeting of her home by gunmen took place.

38. I also accept that there is a risk to the first appellant (in particular) of being subject to detention under the anti-terrorist law if the family moved to a different registration area from their own. Mr Hodgetts did not draw my attention to any material dealing specifically with the difficulty of registering in a different area. When the first appellant was last detained he was, obviously, outside his own area when he was staying in his father-in-law's house. Although this risk may exist, it does not have any real bearing on my finding that the appellants are entitled to international protection. It is the risk of being targeted because of the second appellant's academic background which, in my judgement, creates a real risk of persecution for a Convention reason, serious ill-treatment contrary to Art 3 or of being killed contrary to Art 2 of the ECHR in any (unspecified by the respondent) Sunni area of Baghdad other than their home area.
39. For that reason, internal relocation is not open to the appellants.
40. However, it would also, in my judgement, be unreasonable or 'unduly harsh' to expect the appellants to relocate having regard to all their personal circumstances Januzi [2006] UKHL 5; AH(Sudan) [2007] UKHL 49 and para 3390(b) of the Rules). The first and second appellants are both professionals and the background evidence and Dr Fatah's report to which I was referred by Mr Hodgetts, in my judgement, demonstrates that even if they were to seek other employment there would be considerable difficulties which do not make that a realistic option in order to support themselves as a family. If the second appellant were to obtain employment in another university that would simply create the circumstances for the real risk to her and her family in any event. Mr Richards explored with the second appellant in cross-examination the possibility of her being a vet in Baghdad but she quite clearly stated she lacked the qualification; even though she had some background, she was now specialised in physiology. Mr Richards did not pursue this possibility in his submissions.
41. For these reasons, therefore, I am not satisfied that the appellant have the option of internally relocating within Baghdad which is the only possibility put forward by the Secretary of State.
42. Thus, the appellants have established that there is a real risk that if returned to Iraq they would be subject to persecution for a Convention reason or a breach of Articles 2 and 3 of the ECHR.

Decision

43. The decision of the First-tier Tribunal to dismiss the appellants' appeals on asylum grounds and under Articles 2 and 3 of the ECHR involved the making of an error of law. Those decisions are set aside.
44. The decision to dismiss the appeals under Article 8 is not challenged and stands.

45. I remake the decisions allowing the appeals on asylum grounds and under Articles 2 and 3 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal

Date: **9 December 2014**