IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10302/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 May 2015	**On 8 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SARYAS SARDAR MOHAMMED
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Mr M Rudd, Counsel

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as "the respondent" and Mr Mohammed as "the appellant".

2. No application for anonymity has previously been made in these proceedings and there is no material before me to date to suggest that such an order is required.

3. The appellant is a citizen of Iraq born on 20 April 1991 who arrived in the United Kingdom on 4 December 2007 and who lodged an application for asylum some two days thereafter. On 18 February 2008 the respondent refused his application but decided to grant discretionary leave to remain until 19 October 2009 as an unaccompanied minor. On 9 October 2008 the appellant made a further application to remain in the United Kingdom on asylum and human rights grounds. The respondent again refused the application and the appellant's appeal was dismissed in a decision promulgated on 10 May 2011. The appellant applied for permission to appeal and on 2 June 2011 the First-tier Tribunal granted such permission. However, on 12 December 2011 the Upper Tribunal found that there was an error of law in the Immigration Judge's decision and the Secretary of State was required to make a fresh decision. On 20 August 2014 the appellant's solicitors lodged further representations and supporting documents. Thereafter on 19 November 2014 the respondent made a decision to refuse to grant asylum to the appellant under paragraph 336 of HC 395 (as amended) and made a decision to refuse to vary the appellant's leave to remain. The respondent also made a decision to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

4. The appellant appealed that decision and following a hearing at Bradford and in a decision promulgated on 26 January 2015 Judge of the First-tier Tribunal Cox allowed the appeal on asylum grounds and under Article 3 but dismissed it on Humanitarian Protection grounds.

5. The judge's findings as to fact and credibility are to be gleaned from paragraphs 23 through to 42. He found at paragraph 41 that on the totality of the evidence there is a reasonable degree of likelihood that the circumstances in Baghdad would be unduly harsh and the appellant could not reasonably be expected to return there. He noted that the appellant's claim for asylum had already been considered by an Immigration Judge and that he was bound by the authority of **Devaseelan v SSHD [2002] UKIAT 00702**. In the first decision the judge accepted that the appellant is an Iraqi Kurd from Kirkuk and that his father had some involvement with the Ba'ath Party. However the judge rejected the appellant's claim that his father had a high profile with that party and that there would be a backlash from other Kurds either at the point of regime change or since. Additionally the judge was not satisfied that the appellant was telling the truth, did not accept that he had been approached by members of the Ansar Al-Sunna, and then threatened by them verbally or in writing.

6. The Presenting Officer before the judge in the instant appeal accepted that the judge had no reason to go behind the judge's positive findings of fact as to the appellant being from Kirkuk which is a "contested area" that, in these circumstances, the respondent accepted that the appellant could not safely return to Kirkuk at present.

7. Therefore the issue before Judge Cox was agreed to be whether the appellant, as a Sunni Muslim Kurd from Kirkuk, can reasonably be expected to relocate to Baghdad. The judge noted that the Home Office Presenting Officer stated that at present individuals from the contested

areas are only being returned to Baghdad and accepted that the appellant could not travel to the KRI because of the general security situation in Iraq outside Baghdad.

8. The representatives also agreed that as the appellant is from a "contested area" the present country guidance cases were not relevant to the determination of the issues before the judge. Reliance by both of them was placed on paragraph 1.3.63 of the Country Information and Guidance Report for Iraq dated 24 December 2014.

9. The judge went on to consider evidence in relation to the appellant's identification and found that he ought to be able to obtain his civil status ID card were he to be returned.

10. He then considered the issue of internal flight recognising that the appellant is a young man who at the time of the hearing was 23 years of age and had shown an ability to adapt to life in the United Kingdom. He noted how well the appellant spoke English and recognised the life skills that he holds which will stand him in good stead in Baghdad.

11. The judge then went on at paragraph 37 to find that were the appellant to be returned to Baghdad his circumstances would be very different from when he first arrived in the United Kingdom. At that time the appellant was a minor and was quickly placed under the care of the local Social Services. If the appellant were returned to Baghdad he would get little if any support, especially as he is a young single male. His difficulties would be compounded by the fact that he has never been to the city before and would need to quickly identify and familiarise himself with a host community sharing a similar ethic and religious background.

12. Further the judge was satisfied that the general situation in Baghdad is deteriorating. He drew this conclusion from an Amnesty International report dated 30 October 2014 to be found within the appellant's bundle at page 60. That report found, amongst other things, that "dozens of cases of abductions and unlawful killings by Shi'a militias in Baghdad …"

13. The judge further considered the Country of Information and Guidance with particular reference to "reports of internal displacement to Baghdad and the south and sectarian divisions". Paragraph 1.3.63 states:-

> "However since these determinations were promulgated, Iraq has experienced significant civil unrest and displacement, following widespread territorial losses to non-state armed groups, notably ISIL. To consider the reasonableness of internal relocation, decision makers must refer to the latest country facts and guidance. Decision makers are reminded to refer to the very latest country information available. See Annex O: Sources of Country of Origin Information (COI)"

Paragraph 1.3.66 states:-

> "In particular reports have shown that Baghdad has become less ethnically and religiously diverse, with fewer 'mixed sect' or Sunni areas. This may explain why in Baghdad IDPs are concerned that the hospitality of the host community will not last long, raising doubts as to whether Baghdad presents a durable option for relocation."

14. The judge concluded that there was an acknowledgement by the respondent that there are doubts as to whether Baghdad represents a durable solution for IDPs and in all the circumstances and on the individual facts of this particular appeal the judge found that he was not satisfied that the appellant's life skills developed in the United Kingdom would be of much assistance to him in Baghdad. He was satisfied that there is a reasonable degree of likelihood that the circumstances there would be unduly harsh and the appellant could not reasonably be expected to return there.

15. The respondent sought permission to appeal and in a decision dated 17 February 2015 Upper Tribunal Judge Martin concluded that it was arguable "as argued in the grounds that the judge erred in his consideration of the COI report and misconstrued its content as suggesting Baghdad was unsafe for Sunni Kurds. On the basis that the judge may also have erred in departing from the country guidance of **HM and Others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)**".

16. Thus the appeal came before me.

17. Mr Avery argued that pertinent to this appeal was the current country guidance **of HM and Others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)** which found that, generally, returns to Baghdad are feasible. In this appeal the judge found that the return of the appellant was not an option because Baghdad is not a durable solution for returning displaced persons. The basis in evidence for this is the Country Information and Guidance Report and in particular paragraph 1.3.66 thereof. He contended that there has been a misrepresentation of the evidence and that the relevant extract from the report notes that there is the *possibility* that there *may be* some future difficulties for Sunnis in Baghdad. That possibility does not equate to a reasonable likelihood. Furthermore the judge has not assessed the case on the basis of the evidence of the circumstances at the date of the hearing. Moreover the Tribunal should have taken account too of paragraph 1.3.67. That states:-

> "Nonetheless Baghdad has for decades been an attractive destination for those seeking refuge because of its close proximity to conflict areas, the lower costs of living compared to KRI, and because it has sizeable Shia and Sunni IDP populations. At the end of October 2014 there were 127,446 IDPs residing in Baghdad. According to IOM a significant majority of IDPs in Baghdad were Arab Sunnis."

From this it is clear that there is a large Sunni population currently in Baghdad and there is no evidence to show that they are currently the subject of ill-treatment and that although the areas in which they live may be reducing there is no evidence to show that they are subject to persecution or that there is a real possibility that they will be. Therefore the judge's assessment of risk on return is unfounded and wrong and his asylum and Article 3 assessments are accordingly unsustainable.

18. Mr Rudd contended that the issue before the judge was a narrow one and his assessment of the risk was perfectly adequate, the key issue being that the appellant is a 20 year old Sunni Muslim, male and from Kirkuk and

formed therefore "perfect fighting material" for Islamic State. The conclusions of the judge turned upon the specific facts of this appeal and there can be no criticism of his analysis which is detailed at paragraphs 29 to 38 of his decision. The judge, contrary to the respondent's submissions, was not concluding that it was unsafe for IDPs to return to Baghdad but that for this specific appellant that would be the position on a consideration of the totality of the evidence including that provided by the respondent and that contained within the appellant's bundle including at page 59 an Amnesty International Report headed "Absolute Impunity: Militia Rule in Iraq" dated 13 October 2014.

19. I find that the judge has not erred as asserted by the respondent. He has carried out a clear analysis of the documentary evidence that was before him including not only background material produced by the respondent but also by the appellant. He has recognised that there are specific facts within this appeal in relation to this particular appellant which, when set into the context of the totality of the background material render it unsafe for the appellant to be returned to Baghdad. This is the conclusion at paragraph 41 of his decision.

20. The Amnesty International Report was not referred to in the respondent's grounds seeking permission to appeal. The judge refers to it at paragraph 38 of his decision where he notes that Amnesty International has documented dozens of cases of abductions and unlawful killings by Shi'a militias in Baghdad, Samarra and Kirkuk, with many more such cases reported all over the country. The judge took into account the totality of the material, as I say, and concluded that not only was he not bound by country guidance cases but that the general situation in Baghdad is a deteriorating one. The Amnesty International Report goes on to conclude that crimes against Sunnis are being perpetrated against the background of increased sectarian tensions within Iraq and that there have been mass human rights abuses with IS fighters carrying out frequent bomb attacks in predominantly Shi'a areas in the capital and elsewhere that either deliberately target Shi'a civilians – sometimes in places of worship or indiscriminately kill or injure civilians along with members of the security forces or of pro-government militias. Shi'a militias, for their part have been taking advantage of the atmosphere of unlawfulness and impunity to abduct and kill Sunni men.

21. Mr Rudd emphasised, rightly, that this was a facts specific case. He was right to do so.

22. The judge has given adequate reasons for coming to the conclusions that he did. They were open to be made on the totality of the evidence.

Conclusions

23. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

24. I do not set aside the decision.

Signed Date 5 June 2015.

Deputy Upper Tribunal Judge Appleyard