Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01813/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 July 2014	**On 13 February 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ZANA ABDULLAH ISMAEEL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Lemer, Counsel instructed by Kesar & Co Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Although this is an asylum appeal I see no need for anonymity and I make no order restraining publication.

2. This appeal challenges the legality of a decision of panel of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent to make him the subject of a deportation order.

3. Permission to appeal to the Upper Tribunal was granted because a First-tier Tribunal Judge thought it reasonably arguable that the Tribunal had reached conclusions for legally impermissible reasons. In particular, it was

said, the Tribunal had failed to make proper findings on background evidence suggesting that the appellant would be at risk in the event of return to Iraq because of his westernised appearance, because it had interpreted medical evidence inappropriately and, possibly, had misunderstood the medical evidence it was given.

4. For completeness I note that the original grounds provided by the appellant were in draft form and so, for example, perfectly reasonable propositions of law, were supported by nothing more than the instruction "**insert case**". Whilst I am sure this was vexing for Mr Lemer, whose professional standards are better than this, the error caused no inconvenience to anyone. Indeed it was sufficient for permission to appeal to be granted and the perfected (formally "amended") version of the grounds was accepted without difficulty.

5. The papers show that the appellant was born in 1982 and claimed asylum in the United Kingdom on 27 August 2003 after he was apprehended by police in Kent. He said he had entered the previous day.

6. His application for asylum was refused and a subsequent appeal dismissed on 9 December 2004. His appeal rights against that decision exhausted on 30 December 2004. He was listed as an absconder on 17 March 2006.

7. On 6 December 2010 at the Crown Court sitting at Newport he was sentenced to consecutive terms of six months' imprisonment for the offences of possessing a false identification document with intent to deceive and also for failing to surrender to court in 2006. According to paragraph 3 of the determination "on 6 December 2010 he was sentenced to six months' imprisonment on each count to run concurrently". As far as I can see that is just wrong. The sentences were clearly consecutive to one another which, presumably, is why the First-tier Tribunal at paragraph 36 of the determination referred to his "twelve months' sentence".

8. This is a case where I remind myself very firmly that an error is not a material error of law unless it might have made a difference to the outcome of the case.

9. I consider carefully the grounds and submissions made. The First-tier Tribunal discounted the opinion of a witness, Julia Guest, because it did not regard her as an expert. There is room for different opinions about the meaning of the word "expert" in the context of country conditions. There is no recognised qualification or professional body to which "country experts" can belong. Each report must be considered on its own merits and, where necessary, the expertise of the witness evaluated.

10. I do not agree that it is a particularly telling feature of a person's expertise that she has not visited a country recently or at all. The value of a visit can be much exaggerated. A person can only perceive a very small slice of life over a relatively short period of time during the course of a visit and

it does not seem to me that it has obvious advantages over careful analysis of reports of various qualities from various sources.

11. The particular criticism made here is that Ms Guest does not claim any relevant qualification. She describes herself as a "documentary filmmaker and photographer". This is not impressive. She does not claim to be trained in producing publications subject to peer review and whilst her personal conscience might encourage her to report things accurately I have no basis for assuming that any particular event she reported was typical or representative of the treatment of a certain person or classes of people in a particular place.

12. This does not mean that she has nothing valuable to say. One of the things that Ms Guest has done is to refer to respected reports, such as the Human Rights Watch Report, and draw from it points of interest. Whilst it may not have been necessary to have instructed Ms Guest in order to consider such reports their weight is not diminished because they come from her rather than another route.

13. Ms Guest explained, and I accept, that there was for a time a fashion amongst some young people for wearing their clothes and hair in a particular way that came to be known as "Emo" which is a shortened form of the word "emotional". Whilst the people who chose to present themselves in that way may well have intended nothing more than to adopt a passing trend, it was seen by some in Iraq as being linked with Satanism and attracted sharp opposition there. Although the government disapproved it seemed disinclined or unable to stop vigilante groups from harassing, attacking and, in extreme cases, killing people who offended their values by their dress.

14. Ms Guest suggested that the appellant would be at risk because he would not know where he could dress in a particular way.

15. I have taken particular care to read the statement of 5 February 2014. There the appellant expresses his preference for wearing silver chains and bracelets in a way that would be unacceptable in Iraq, particularly amongst the Kurdish community. It does not assert a *need* to dress in this way to give effect to his conscience. It is not, for example, remotely like the case of a Sikh wishing to wear a turban. I do not accept that it is within the scope of the Refugee Convention to offer protection to a person who risks disapproval because he prefers not to dress in accordance with the fashion of the community in which he lives. That might be personally frustrating but it is not persecution and adverse consequences can be avoided by changing his appearance. I see no reason to find that this appellant would not change his appearance, albeit possibly with ill grace.

16. I note that there is reference to a Daily Mail report that 90 Iraqi students were killed for having "strange hair and tight clothes". It is difficult to see how the figure of 90 is established but even if it is anywhere near the truth it is shocking to think of people being killed just because of their clothes.

Nevertheless, dressing in a particular way out of fashion sense is something the appellant can reasonably be expected to avoid.

17. I reject the suggestion in the report that he might find himself so at sea in the country to which he is returned that he will not know where he can and cannot dress in a particular way and would be at risk of violence as a result. Quite simply he could find out and not dress in accordance with his tastes unless he knew it to be safe. What he is complaining about here is a restriction on personal choice but, without more, he is not allowed protection against that.

18. I find no material error in the consideration of the expert evidence.

19. The second point taken in the grounds is that the Tribunal made an impermissible medical finding.

20. Here I am satisfied that an error has been made out. The determination reads as if the Tribunal found that he was not engaging in "talking therapy" when it is clear from paragraph 13 of the report that he did.

21. I cannot accept that there could be any proper basis for challenging the view of Dr Ibbotson at paragraph 11(f) where he said:

> "It is my opinion that he would attempt suicide if this were possible once he knew repatriation were imminent. If he could not succeed then he would do this at the first opportunity in Iraq as he sees that situation as totally hopeless."

22. However I do not see that this is of much assistance to the appellant in the context of this appeal. The authorities in the United Kingdom are now alerted to this possibility and could be expected to make suitable arrangements in enforcing the appellant's removal if that is what they decide to do. I do not doubt that medical facilities are less attractive in Iraq but the First-tier Tribunal noted evidence that treatment was available and for the purposes of determining human rights this is enough.

23. I acknowledge the evidence before me, particularly the report from Doctors Without Borders in the form of a press release dated 30 April 2013, commenting on the need for increased mental healthcare in Iraq. It would appear that there are many people in Iraq whose mental condition is not very different from this appellant's. There are people who have been traumatised by things that have happened to them in the upheavals that have taken place in that country in recent years. I do not accept that there is the complete absence of medical care that would be necessary in order to found a human rights claim.

24. The Tribunal gave satisfactory reasons for finding that the appellant was not at risk because of any perceived Ba'ath Party affiliation because of his father's political background.

25. It is also clear to me that the original decision of the Secretary of State was based on a finding that the appellant's deportation is conducive to the public good because, in the Secretary of State's, view the offending has caused serious harm and the appellant has shown particular disregard for the law. He is therefore eligible for deportation. It is absolutely plain that the Secretary of State was entitled to find that the appellant had shown particular disregard for the law. That is a very apt description for someone who commits a criminal offence and then commits a further criminal offence by not attending court when required. The concept of "serious harm" is more elastic but false document offences are serious because they are part of a relatively easy of a person establishing himself in a country where he was not entitled to be.

26. In any event, once a proper reason has been identified by the Secretary of State for finding the appellant eligible for deportation, the decision could only be appealed on grounds of irrationality to the Administrative Court. This Tribunal has no power to interfere with such a decision and on the facts before me I certainly would not encourage any application.

27. I agree with Mr Lemer that paragraph 36 of the determination, by referring to the appellant's "twelve months' sentence", appears to be considering paragraph 398(b) of HC 395 but that is not material. Paragraph 399A applies where 398(b) or (c) applies. The error has made no difference.

28. Essentially this is a story of a citizen of Iraq who arrived in the United Kingdom irregularly and claimed asylum after being arrested on 27 August 2003. His application was refused and a subsequent appeal dismissed. He did not go home. Rather he used illegal means to try and extend his stay and was caught and convicted and then he disappeared. He was eventually caught in 2010 and sent to prison for a total of twelve months when he was warned about his liability for deportation on grounds of public good. He made a further and equally unsuccessful asylum claim and eventually in 2013 was told of his liability to being deported.

29. There is no avoiding the fact that the First-tier Tribunal has used language sloppily in a few places and this has given Mr Lemer a way in to criticise the determination which he has done energetically and professionally. The fact remains that in my judgment the decision was inevitable and the errors were immaterial. The Tribunal was entitled, maybe even obliged, to conclude that the appellant was not a refugee.

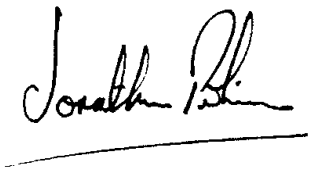
30. In my judgment the appellant is mentally ill but the Tribunal was right to find that the issues of mental health can be addressed so that removing him does not contravene his rights under Article 3 or under Article 8.

31. The appellant does not raise any of the arguments such as having a close life partner or a minor child, which can sometimes be very weighty in an Article 8 balancing exercise. The appeal cannot succeed on human rights grounds on the evidence that is before the Tribunal.

32. I recognise that the situation in Iraq might be thought to be in a state of flux. If there is new evidence available concerning, for example, the medical care that the appellant would get in Iraq then the appellant might want to consider a fresh application but the evidence before the Tribunal does not support a finding that could lead to the appeal being allowed.

33. It follows that although the appellant has identified problems in the determination of the First-tier Tribunal he has not shown any material error of law and I dismiss his appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 11 February 2015