IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/10156/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 June 2015	**On 12 June 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

HUSAM FAWZI MNAJID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – AMMAN, JORDAN

Respondent

Representation:
For the Appellant: Ms Brooksbank, Simpson Millar, Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Husam Fawzi Mnajid, was born on 17 August 1990 and is a citizen of Iraq. The appellant had sought entry clearance to the United Kingdom as a dependent relative but his application was refused by the Entry Clearance Officer (ECO) on 7 August 2014. The appellant appealed to the First-Tier Tribunal (Judge Dearden), which, in a determination promulgated on 8 January 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant's mother, father and brother have been accepted as refugees in the United Kingdom with limited leave to remain. The appellant's sister is a doctor in the United Kingdom and is also a British citizen. The appeals of the appellant's father and brother against decisions of the Secretary of State refusing their claims for asylum were allowed in July 2013 by Judge Ince in the First-tier Tribunal. Judge Ince accepted in the course of those proceedings that the appellant had been kidnapped and abused by political opponents and detained by them for a period of fifteen months between February 2013 and May 2014. Judge Dearden accepted, following the principles in *Devaseelan* [2007] UKIAT 00702, that the appellant had

> "… indeed been kidnapped and abused by political opponents between 26 February 2013 and 12 May 2014. He then managed to escape from the militia group assisted by a friend. He eventually contacted his relatives in the United Kingdom and with their assistance has managed to establish himself in a flat in the Baghdad area [of Iraq]."

3. Judge Dearden noted that the appellant appealed under the provisions of paragraph 317 but also 319V of HC 395 (as amended).

4. There are three grounds of appeal. I shall deal first with Ground 3 because it is determinative of the outcome of this appeal to the Upper Tribunal. Ground 3 deals with the judge's findings as regards "most exceptional and compassionate circumstances, "a mandatory requirement of qualification under both paragraph 317 and 319V. As noted above, the appellant is living in a flat in Baghdad and receives funds from his relatives in the United Kingdom. The judge was concerned at [26(5)] that the witnesses who gave evidence before him (the appellant's brother who is a refugee and also Dr Monajid, the appellant's sister), had given discrepant evidence regarding the presence of family members of the appellant in Iraq. The appellant's brother had said that the appellant had "no extended family and relatives in Iraq" whilst Dr Monajid said there were probably "40 plus relatives still living in Iraq." In any event, the judge noted that

> "… Baghdad is a very large city and even Dr Monajid could not advance to me that the security situation in Baghdad was so dire that people were afraid to move out of their houses. The fact is that this appellant has to go and buy his food and has availed himself of the assistance of at least two doctors: in my conclusion to suggest he is not able to go out of the house because of the previous kidnap is not credible."

5. The judge considered that the appellant was,

> "… by Iraqi standards .. living in fairly comfortable circumstances having his rent paid and having monies sent to him in excess of that amount. In my conclusion the appellant is living on his own but could not be said to be living in the most exceptional compassionate circumstances."

6. Ground 3 concentrates on what may be described as Judge Dearden's alternative finding as regards "most compassionate circumstances," namely that, if the appellant did not wish to live alone, he could move to live elsewhere in Iraq with one of his "40 plus relatives." Ms Brooksbank,

for the appellant, submitted that it would not be safe for the appellant to travel to stay with relatives and that his relatives only lived in Anbar Province where the security situation was such that Article 15 of the Qualification Directive would be breached if the appellant were compelled to live there.

7. The problem with that submission is that it is, as I have noted above, in the nature of an alternative secondary finding to Judge Dearden's primary finding which is that the appellant is not living in exceptional compassionate circumstances in his apartment in Baghdad. As regards that finding, the grounds only assert that

> "Judge Dearden found that the appellant had been kidnapped, held for fifteen months, tortured and abused. This appellant is in circumstances which can only be described as exceptional and compassionate and fall within the scope of those envisaged by the Rules."

That is, in my opinion, an assertion which is little more than a disagreement with a finding which was open to Judge Dearden on the face of the evidence. Ms Brooksbank submitted that the appellant was, in effect, living in a prison cell since he was unable to leave his flat for fear of encountering further abuse at the hands of those who had kidnapped him in 2013/14. However, Judge Dearden has found that the security situation in Baghdad is not so bad that people living there generally are unable to leave their homes or, indeed, that the appellant is confined to his home; the judge also made specific findings that the appellant leaves his apartment in order to buy food and to visit his doctors. Those were findings which were plainly available to the judge on the evidence. It is irrelevant whether the judge may have erred in law as regards the security situation elsewhere in Iraq because his primary finding was sound. I find that the appellant has failed to show that Judge Dearden erred in law by concluding that the appellant is not living in the most exceptional compassionate circumstances in Iraq. The consequence of that finding, is appeals under the Immigration Rules in respect of paragraphs 317 and 319B must fail.

8. The remaining grounds of appeal raise interesting points as regard the construction of paragraph 317 and 319V. Judge Dearden found [26] that the appellant fell foul of *KA and Others* (Adequacy of Maintenance) [2006] UKAIT 0065. The judge found that "effectively [the appellant's refugee brother] has been living at a level less than income support in order to fund his brother. There are public policy reasons why this is unacceptable." As a result, the judge declined to find that the appellant was financially wholly or mainly dependent on the relative who has limited leave to remain as a refugee in the United Kingdom. Ms Brooksbank challenged that finding on the basis that paragraph 317(3) simply requires an applicant to prove that they are financially wholly or mainly dependent; the further requirement at [4A] that the applicant "can and will be maintained and accommodated adequately ... without recourse to public funds" is a separate requirement which could be met by the appellant having entered the United Kingdom because he would receive financial

support and accommodation from Dr Monajid, his sister. She made the point that, at paragraph 317(4), the Rule introduces the expression "sponsor" for the first time ("can and will be accommodated adequately ... without recourse to public funds in accommodation which the sponsor owns or occupies exclusively"); she submitted "the sponsor" providing the accommodation and funding after the appellant had arrived in the United Kingdom need not necessarily be the same individual who is currently "financially or wholly" funding the appellant whilst he is living abroad. This is an interesting submission but I do not agree with it. It is unhelpful when the Immigration Rules introduce new items of nomenclature half way through a provision. However, it is reasonably plain, on any proper construction of this Rule, that the word "sponsor" is the same "person present and settled in the United Kingdom" referred to at sub-paragraph (3). In the present case, Dr Monajid is, in effect, acting as a shadow sponsor whilst the appellant's brother acts as the main sponsor. In my opinion, such a joint or hybrid sponsorship does not fall within the provisions of paragraph 317. The arrangement in this case certainly cannot fall within the provisions of 319V because Dr Monajid is not a "person with limited leave to enter or remain .. as a refugee or beneficiary of humanitarian protection." However, these observations are somewhat academic given that I have found that this appeal cannot succeed because the appellant is unable to show that he is living in Iraq in the most exceptional and compassionate circumstances.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane