



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

Appeal Numbers: AA/00958/2015  
AA/00961/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22 February 2016**

**Decision & Reasons  
Promulgated**

**On 21 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**NN**

**MS**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms S. Jegarajah of Counsel, instructed by H & S Solicitors  
For the Respondent: Mr. S. Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Burns promulgated on 21 October 2015 in which she dismissed the Appellants' appeals against the Secretary of State's decisions to refuse to grant asylum.
2. I have made an anonymity direction following that which was made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

"The grounds raise various issues in regard to the judge's assessment of risk on return in light of contradictory expert evidence and assert that the judge erred by failing to give adequate weight to the expert evidence of [JH]. Whilst the question of weight is a matter for the judge, the issues in this case are sufficiently complex and serious so as to justify a more detailed assessment of the grounds and for that reason I am prepared to grant permission."
4. The first Appellant attended the hearing. I heard submissions from both representatives, following which I reserved my decision, which I set out below with reasons.

#### Error of law

##### *Failure to depart from country guidance*

5. It was submitted that it was perverse of the judge to reject JH's evidence and that, applying the relevant legal test, this was a case where it was lawful and necessary for the judge to depart from the country guidance in reliance on "relevant cogent fresh evidence".
6. The judge deals with JH's evidence from paragraphs [50] to [56]. In paragraph [54] the judge states:

"I found [JH] to be a helpful and honest witness. However I cannot consider him to be independent given his relationship with the Appellant's brother. I do not consider his evidence to be deliberately exaggerated but I cannot exclude the very real possibility that in agreeing to give evidence for his business partner's sister, when his business partner was also present in court, would place the witness under undue stress. At paragraph 10.3 of the Practice Direction we are reminded that "Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation". [JH] was put under considerable pressure."
7. In paragraph [56] the judge states:

"That is not to say that I criticise [JH] in anyway at all. I accept that he has a wealth of knowledge about Iraq and that this has been gleaned from his work with the Central Bank of Iraq, the National Intelligence Service and

his decision to stay outside of the green zone in Baghdad in a hotel where he would be more likely to get a true picture of the city.”

8. The judge found that JH was a “helpful and honest witness”. However she then states that his evidence was not “deliberately exaggerated”, leaving open the suggestion that there has been some exaggeration albeit not deliberate. This is not compatible with her finding that JH was an honest witness. Either JH has given honest evidence or he has exaggerated his evidence.
9. In paragraph [56] the judge accepts JH’s wealth of knowledge. She sets out in paragraph [51] that he had “considerable experience of working in Iraq”, including six or seven trips “during this year”. She states that he is a former intelligence officer and a former diplomat. However in paragraph [54], despite having acknowledged this former experience of JH, she states that he was put under “considerable pressure” due to the presence of NN’s brother in court. No reasons are given for the finding that he was put under considerable pressure, and given the previous experience of JH, and the finding that he has been an “honest witness”, this failure to give reasons for why he would feel under considerable pressure is an error of law.
10. In paragraph [105] the judge states:

“If I accepted [JH]’s evidence in this regard as I understand it he would be effectively saying that no Shia woman is safe on return to Iraq and to reach this conclusion I would have to disregard the very recent country guidance.”
11. In paragraph [59] the judge states:

“[JH]’s experience is perhaps more recent than that of Dr. F. Indeed he was in Iraq the previous week and is due to return at the beginning of November. He described the situation as fluid. The country guidance case which was heard on 18<sup>th</sup> and 19<sup>th</sup> May 2015 he said did not now set out the true position. For example Islamic state seized Ramadi in May 2015.”
12. I have found above that the judge’s treatment of JH’s evidence is contradictory. She acknowledges that accepting his evidence would have required her to depart from the country guidance case. It was open to her to depart from the country guidance case were she to have considered that she had fresh evidence before her. In paragraph [59] she accepts that Mr Holden’s experience is very recent. She acknowledges that the situation is fluid and that the country guidance case does not now reflect the true position in Iraq. However, her treatment of JH’s evidence, and her failure to give adequate and clear reasons for not relying on it, is an error of law.

## *CSID*

13. It was submitted in the grounds of appeal that the country guidance case required the judge to decide whether the Appellants had a CSID, but she had failed to take into account the fact that the CSID which the Appellants possess was only of use to them in their home area, which was an area which was unsafe for the Appellants.
14. In paragraph [95] the judge states:

“The Appellant’s evidence was that her CSID was for her home area which is Al-Jihad. The Appellant would not need to go to Al-Jihad to obtain a CSID (as per paragraph 13) because she already has one.”
15. In paragraph [96(a)] she states “I am told that the Appellant and her daughter have a CSID”. In paragraph [100] she states that the Appellant would not be required to return to Al-Jihad district, but that she would be returned to Baghdad and is likely to settle there [101]. In paragraph [103] she sets out the fact that the Appellant’s evidence was that she would be unable to live in Al-Jihad. She sets out the evidence of JH that Al-Jihad is a predominantly Sunni area, and states that she cannot find reference to Al-Jihad in Dr. F’s report.
16. The judge has stated that the Appellant’s evidence was that the CSID was for her home area, and has also found that the Appellant would not be required to return there, but would be likely to settle in Baghdad. She has not found any reference to the situation in this area in the report of the expert on whom she has chosen to rely. She has failed to indicate why she has rejected the Appellant’s evidence that she would only be able to use her CSID in her home area. She has acknowledged that the Appellant does not need to return to this area but is likely to settle in Baghdad, but she has not made any finding that the Appellant would be able to use her CSID in Baghdad.
17. Further evidence was provided at the hearing before me relating to the issue of CSIDs but, irrespective of this further evidence, I find the judge has failed to give reasons as to why the Appellant would be able to use her CSID in Baghdad, and why she has rejected the evidence of the Appellant that would only be able to use it in Al-Jihad.

## *Lone women – particular social group*

18. It was submitted in the grounds of appeal that the reasoning on the issue of the Appellants being lone females in Iraq was wholly inadequate. I was referred to paragraph 202 of AA (Article 15(c)) Iraq CG [2015] UKUT 00544. It was submitted that the considerations for women were far more nuanced.

19. The judge deals with the issue of particular social group in relation to asylum in paragraph [89], and in relation to Article 15(c) at paragraph [96]. She further considers it in paragraph [110]. However, given her failure to address properly the issue of whether the Appellants could use their CSIDs outside of their home area, her finding that there are a considerable number of lone females living in Iraq particularly in Baghdad, given that she had not established that they will be entitled to use their CSIDs in Baghdad, is inadequately reasoned. The judge acknowledges that the CSID is needed in order to access financial assistance, employment, education and medical treatment [94]. In paragraph [110], when considering the position as unaccompanied females, she finds that they would be able to relocate to an area of Baghdad which would be safe, but this is set against the failure to find that they would be able to use their CSIDs in Baghdad.

*The position of MS*

20. It was submitted that the judge had failed to note that MS is Sunni. I find it is unclear from the decision whether the judge considered the position of MS separately from that of her mother at all. In paragraph [83] the judge finds that NN is not at risk simply for being a Shia Muslim or as a result of a mixed marriage. In paragraph [90] she indicates that she is aware of the fact that MS has a "mixed heritage". She refers to the issue of MS's surname in paragraph [39] when setting out the evidence of MN, NN's brother. In paragraph [68] she addresses Dr. F's evidence on those with the same surname as MS, and states that "they would not be targeted more greatly than any other Sunnis". She then finds that NM would not be at risk for having entered a mixed marriage, but does not address the fact that MS is a product of a mixed marriage and carries a Sunni surname, in contrast to her Shia mother.
21. I find that it is not clear that the judge has fully considered the position of MS on account of her carrying a Sunni surname, whereas her mother is a Shia. She does not consider the implications for both Appellants as a result.
22. I find that the above are errors of law which are material to the decision.
23. Paragraph 7.2 of the Practice Statement dated 10 February 2010 contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

**Notice of Decision**

The decision involves the making of material errors of law. I set the decision aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 9 March 2016

Deputy Upper Tribunal Judge Chamberlain