



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05824/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 June 2018

Decision & Reasons Promulgated  
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AKRAM [A]  
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mrs H Arrie of Arden Solicitors Advocates

For the Respondent: Mr Jarvis Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. On 13 November 2017 Deputy Upper Tribunal Judge Chana found an error of law in the decision of the First-tier Tribunal Judge who allowed the appellants appeal, pursuant to article 8 ECHR, on the basis of the appellant 17-year-old child's diagnosis of autism. The Deputy Judge directed that the matter be listed for a Resumed hearing limited to article 8 ECHR only there being no cross-appeal by the appellant against the decision of the First-tier Tribunal to dismiss

his appeal on protection- asylum, humanitarian protection, or articles 2 and 3 ECHR, grounds.

2. The matter has been adjourned in the interim pending receipt of an expert report from Dr Fatah which is now available, dated 22 February 2018.
3. At the start of the appeal hearing Mr Jarvis sought permission to adduce further evidence for which permission was granted. Time was provided for Mrs Arrie to take instructions from the appellant in relation to the documents after which she confirmed the appellant was happy to proceed with the hearing. Oral evidence was received from the appellant only who was cross examined by Mr Jarvis.

## **Background**

4. The appellant is a citizen of Iraq of Arab ethnicity and a follower of the Sunni Muslim faith. The appellant was born in Baghdad in Iraq on 22 August 1966.
5. The appellant entered the United Kingdom lawfully with his wife and their three children on 12 September 2013. Their Visa expired on 13 February 2014. On 11 November 2013 the appellant claimed asylum which was refused on 10 January 2014. An appeal against the decision was dismissed on 17 March 2014 after which the appellant became appeal rights exhausted on 29 April 2014. Further submissions were lodged on 2 September 2014 which were refused on 12 June 2014 against which the appellant appealed. The appeal was allowed on article 8 ECHR grounds against which the respondent appealed. Following reconsideration, the appeal was allowed and the case remitted to be heard on article 8 grounds only.
6. The appellant states he fled Iraq on 18 October 2007 and has not returned since. The appellant claimed that he travelled from Basra to the UAE as at the time there were no flights operating from Baghdad to the Emirates. Whilst in the UAE the appellant was offered employment by a German company operating in Dubai where he was employed as a structural engineer as he possesses a degree in engineering. The appellant states he had several positions during his stay in the UAE.
7. The appellant and his family travelled from the UAE to the UK intending a holiday and to visit museums and tourist attractions. The appellant claims that whilst in the UK he was informed by a friend, an employee in the same company, that he and other employees were being made redundant. The redundancy letter confirmed the appellants Visa was going to be processed for cancellation within approximately four working days; meaning the appellant had no right to return to Dubai. He claims he could not return to Iraq due to the high risks imposed and so claimed asylum in the UK. The appellant confirms that neither he nor his family have a right to live in any other country.
8. The appellant states his children have lived in the UK for nearly 5 years and established their lives here. All their friends are in the UK and the appellant claims they only speak English. The appellant's two older children left Iraq in February 2008 and relocated to the UAE and have not returned to Iraq since and the third child was born in the UAE and has never seen Iraq.

9. The appellant's concerns relate to his son [OA] who, the appellant claims, has a medical condition requiring constant and specialised treatment which is not available in Iraq. [OA] was diagnosed in the UK in early 2014 of having Autism Spectrum Disorder (ASD) and Obsessive-Compulsive Disorder (OCD) which the appellant claims is a mental disorder with symptoms of anxiety and ritualistic behaviours. The appellant states his son has been undergoing therapy and taking antidepressant medication to assist with his disorder since 2014. The appellant claims that his daily dose of Fluoxetine has been doubled since September 2017 as a result of anxiety surrounding immigration matters. The appellant claims [OA] does not understand everything but understands there is a risk of the family being returned to Iraq.
10. The appellant claims [OA] still has difficulties with his bowels as he cannot control his bowel movement and experiences such problems on a daily basis. The appellant claims [OA] needs to be in his own bedroom every day and will not allow any of his other children to share his bedroom even though they live in a two-bedroom house and there are five occupants. The appellant claims that [OA]'s toilet and other routines can put a strain upon the family.
11. [OA] attends Newcastle College where he is taken by his mother by bus. He attends college four days a week although the appellant claims he has no friends at school and that he isolates himself from others and feels that his bowel movement is an embarrassment to him, and that he smells, and is laughed at by some of the college due to his problems.
12. The appellant claims since coming to the United Kingdom they have been supported by NASS. At Newcastle College there is a support team to help [OA] which supports children with autism. [OA] is studying for pre-diploma and is still on level II as he failed his exams last year and is taking GCSE maths and English which he also failed last year.
13. The appellant claims [OA] is sensitive and vulnerable and will not tolerate drastic changes as this will cause his mental health to become unstable. The appellant has hearing issues himself which are assisted with hearing aids. The appellant claims in Iraq neither he nor his wife have family or relatives as his brother left Iraq in 2007 and the appellant claims that they have not heard from him since. His brother's wife returned to live with her family, who are Shia Muslims, in Hillah, in Shia City in the Babil province. The appellant claims they are no longer in contact but that even if they were it will be impossible for his family to live with her as they are all Sunni and would not be accepted by her family nor the area she lives in.
14. The appellant claims if returned to Iraq they will become displaced people with no support and no home to live in and that his children will not have a roof over their head or food to eat. The appellant claims not to have any friends in Iraq and not to have a sponsor to help obtain accommodation or even a hotel if they had money.
15. The appellant claims he has been away from Iraq since 2007 and has no contact with anyone to help him find a job in Iraq and claims it is not possible for him to make an application for a job online or by telephone as Iraqi companies need to know who they are employing. The companies are mostly Shia and only employ

- people already in Iraq who are mostly Shia. The appellant refers to discrimination against Sunni Muslims and claims that although he has skills as a mechanical engineer it will be very difficult for him to find a job. The appellant also refers to corruption in Iraq. He states he is 52 years of age and that age and health are relevant to obtaining employment in Iraq. The appellant claims the retirement age in Iraq is around 55 and as he is nearing the retirement age it is difficult to get any employer to employ him.
16. The appellant claims [OA]'s psychiatric condition in company, with difficulties such as language, social interaction, restrictive repetitive patterns of behaviour and activities, is a problem and that he will not be able to afford treatment for his son. The appellant claims that medication in Iraq has to be paid for privately that he will not have the money to pay for treatment.
  17. The appellant claims when [OA] attains the age of 18, if returned to Iraq, he will still need his medication and help from psychiatric and psychologists because of his behaviour problems. The appellant did not believe that treatment for [OA] exists in Iraq and claims he will not be able to take [OA] to the KRG as he will not have money to do this. The appellant claims that people with autism find difficulty adapting to change which could cause significant stress to [OA].
  18. The appellant's wife did not attend the hearing as the appellant stated she needed to care for [OA] and take him to school, although she provided a witness statement confirming the appellant's position in relation to the family dynamics.
  19. In response to questions put in cross examination the appellant confirmed that a named individual lived in his property in Iraq from the date the appellant left Iraq. The appellant confirmed his home was near to his previous place of employment in Baghdad. The appellant claimed that according to his information his friend had left the property and that others had taken it over who he suspected were from the Al-Mahdi militia. It was pointed out to the appellant that a previous hearing of the First-tier Tribunal had disbelieved his claim of approach by this militia group and indeed it is noted in the Deputy Judge's decision that an earlier judge of the First-tier Tribunal, Judge Bircher, had considered the appellants evidence and found he was not a truthful witness in relation to his brother's involvement and events in Iraq and that the appellant had fabricated his claim. These are preserved findings. When this was put to the appellant he then claimed he was not saying that the militia were in the house but stating that normally if a property is empty they would take it over; but he has no information about the same. It was indicated to the appellant that the finding of the First-tier Tribunal was that his claim was not accepted following which he was asked whether his friend was still in his home in Baghdad. The appellant claimed that he did not believe he was still in the property. The appellant claimed he had been told his friend had left the property although, when asked why had not emailed his friend to establish the position, the appellants reply to this element was not at all satisfactory.
  20. The appellant stated all he knew was what was going on Iraq and that the militia group were within the south of the city near to the area where he lived, and that the militia group had taken control of some parts of Baghdad and that he was in a good area, in a good street.

21. The appellant was asked if he was claiming the militia group took over his home areas in 2006, as he claimed he still owned his property in 2013. The appellant confirmed that he had left the property but had no documents. When it was pointed out to the appellant he claimed he left his home in 2007 he stated that the militia group took over control of some areas at the time he left Iraq.
22. Mr Jarvis pointed out to the appellant that he last rented the property six years after the militia group he refers to allegedly took over the area, to which the appellant's response was to claim the term 'rent' in Baghdad refers to people who live in the house to provide protection not make a payment. The appellant confirmed the house he was describing is two stories high with five bedrooms and a garden.
23. My first finding of fact is that the appellant's claim that the family home in Baghdad had either been taken over by militia group or abandoned by the person whom he allowed to occupy the property when he left in 2007 to go to the UAE has not been shown to be a credible claim. It is not made out the appellant has lost the family home in Baghdad or that that property would not be available to the family if they returned.
24. The appellant was asked when he last worked for the construction company in Baghdad to which he claimed it was 2007 when he used to work for a branch office rather than the head office, although the address on the correspondence attached in the appellants bundle suggests that the office he worked at was either in the same street or very near to the place where the family home was located. The appellant was unable to confirm whether the office was still operating. It was put to the appellant that the consequence of him not contacting the office is that he does not know whether they would be willing to employ him if he returned to Iraq. The appellant claimed that he had not make contact as he was aware of the situation and conditions in Baghdad especially in Shia areas. The appellant claimed that contact with the company is difficult as they do not have a website or application forms that can be completed online. When pressed on the point the appellant confirmed that he had not made any attempt contact them as he claimed that there was no way he could contact them. The appellant was asked in cross examination whether he was presuming it was not possible to contact the company to which he claimed he was not presuming and that companies in general do not have the means to offer refugees jobs. When asked how he would know that and whether he had researched companies or surveyed available jobs in Iraq the appellant claimed that he had worked in the UK but had not checked what the chances would be on return.
25. The appellant is clearly a man with good qualifications and an education. He clearly has a skill that is arguably relevant to the needs of a country such as Iraq where construction jobs both within Baghdad and other parts of the country will no doubt be available for those properly qualified. The appellant also refers in his evidence to having been offered a job in the United Kingdom with Knauf Ltd, a German-based international company producing plasterboard, insulation material, and other items for the construction industry. The appellant was taken on to fulfil the role of a SFS Design Manager although the company wrote to the appellant on 18 August 2016 stating the employment had to be terminated with

- effect from 17 August 2016 as the company had made a mistake, believing the role was covered under the Shortage Occupation List Code 2126 Design and Development Engineers when it transpires it was not as that job code only referred to a role within the automotive industry. The appellant's employment restrictions meant he could not undertake any work although the company indicate that if those restrictions change they will be happy to discuss the situation with him if they have any suitable opportunities at that time. This clearly shows that the appellant is employable within the construction industry.
26. My second findings that I do not find that the appellant has made out that he would be unable to obtain employment within the construction or any related industry to which he has experience and qualifications on return to Iraq. The appellant's evidence is that he has made no attempt to establish whether prospective employment is available either with his previous company or with any other potential employer.
27. The appellant was asked about the Aloosi tribe which he claims is his tribal group and tribal identity. I find on the basis of the evidence provided that representatives of this group form part of the membership of the Tribal Council. The appellants claim that there were no members of the Aloosi tribe on the tribal council in Baghdad but this has been proved to be factually incorrect.
28. The appellant also sought to rely upon his claim of problems with his tribe as a result of his brother's profile, which resulted in them being rejected by their tribe, and that this was the only reason why he had been rejected from the tribal community. The difficulty with this claim is that the appellants claim about his brother has been found to lack credibility by another judge of the First-tier Tribunal which is a preserved finding. I therefore find the appellant to be a member of the Aloosi tribe, that his claim to have been excluded from the tribal community lacks credibility and has no substance, and members of this tribe sit on the tribal Council in both Baghdad and elsewhere where they are found in Iraq. It is not made out the appellant will not be able to seek the assistance of members of this group even if only to establish potential employment leads or assistance on return.
29. In relation to the appellants claim he could not obtain employment as a result of his age, this is not arguably made out as he has not sought to establish whether employment is available. The additional documents provided by Mr Jarvis at the outset of the appeal relate to the Iraqi Social Security laws in Iraq and an article dated the 22 February 2017 that the Iraqi government is drafting a new Social Security law providing for those who have retired which will increase the retirement age from 63 to 65 and the calculation methods for pension benefits. It is not made out the appellant will not be able to work beyond his current years, especially if the law is amended, or that he will be destitute or without proper financial assistance.

[OA]

30. The key aspect of the appellant's case, relating to his application for leave outside the rules, relates to [OA]. The appellants evidence in relation to [OA] is referred to above. Documents provided in the appeal bundle support the

description given by the appellant. A letter written by the Child and Adolescent Mental Health Service, Northumbria Healthcare, dated 2 August 2016 by Dr McCutcheon, a Consultant Child and Adolescent Psychiatrist states:

[OA] DOB: 19/7/2000

I have recently found out that [OA] and his family are imminently moving to Kent. [OA] has been involved with North Tyneside CAMHS since April 2014. He worked initially with my colleague Dr Ameli-Zamani, Consultant Clinical Psychologist, and I became involved initially in relation to an assessment of possible Autism Spectrum Disorder.

[OA] has been given a diagnosis of Autism Spectrum Disorder. He originally came to the service suffering with symptoms of suggestive of Obsessive Compulsive Disorder. He was repeating sentences over and over again until he felt relaxed and was often checking objects such as doors and moving objects within the environment to make sure that they were "just right". Through work with my colleague difficulties in relation to [OA]'s social communication skills were highlighted.

When he was first seen in our service, [OA] had been living in England for around six months having moved from Dubai. [OA] was born in Iraq and lived at home with his mother Rana, father Akram, younger brother Mohammed and younger sister Nadine. At various points his difficulties have put a significant strain on the family life. He struggles to understand his younger siblings needs and his demands for people to repeat themselves frequently has been challenging. There have though been good improvements since he first started work with us.

I will include a copy of my ASD assessment report from the start of 2015. Since this time I have been reviewing [OA] on a regular basis having commenced Fluoxetine. He takes Fluoxetine 20 mg once daily and this seems to have had a good impact on his mental state in terms of some of his obsessional symptoms and levels of anxiety. However he does worry about side effects and has expressed a wish to come off this medication which we were planning to look at this summer.

I think that [OA] is likely to benefit from ongoing CAMHS involvement, partially in relation to monitoring his medication. He is also likely to benefit from whichever educational establishment he attends in September being informed of his diagnosis of ASD. He recently finished year 11 at mainstream school (Burnside School). I think that [OA] struggled to engage in the CBT model although broadly speaking he and his family have found this support helpful. He has found the concept of letting worries and intrusive thoughts go quite helpful.

[OA] has had an educational psychology assessment in North Tyneside which concluded that his thinking and reasoning skills range from below average to low average. In particular he has had some difficulties with verbal understanding which impacts on his ability to understand instructions and explanations given verbally. In terms of his academic skills, he demonstrated good literacy skills and some good maths skills but he had much more difficulty when faced with real-life mathematical problems. He showed some good working memory skills but this assessment also showed that he had difficulties recalling information both verbal, visual and spatial.

Though we will now discharge [OA] from North Tyneside CAMHS will be very happy to be contacted on the above number should you require any further information...

31. A further letter written by Dr McCutcheon dated 6 July 2017 outlined [OA]'s history, previously recorded, adding the following:

.....

Autistic Spectrum Disorder is commonly associated with symptoms of anxiety and ritualistic behaviours and [OA] has been started on Fluoxetine, an antidepressant to help particularly with his OCD-like symptoms. This seems to have been a benefit and [OA] continues on this medication, now at a low dose. I continue to review him regularly in clinic and am pleased that [OA] seems to have adapted well to life at college and things are stable at the moment.

I understand that you are concerned about the potential impact on [OA] should you have to return to Iraq. I am unfamiliar with the mental health or educational system in Iraq but do believe it is appropriate that [OA] remain under a mental health service and receive support educationally at the present time. People with Autism Spectrum Disorder often struggle with change and move back to Iraq would be a substantial change for [OA] and is likely to place significant stress upon the family which would increase the risk of deterioration in terms of [OA]'s mental health.

32. A further letter to [OA]'s GP written by Dr McCutcheon on 20 September 2017 contains a report of a review with [OA] at clinic on 18 September 2017. The letter records:

College seems to be going well although he was a bit disappointed in his repeat GCSE results. There does seem to be an increase in him struggling with people interrupting him and with him wanting people to repeat their answer to questions when he thinks he does not hear. I think this is likely to be OCD-type symptomology.

We agree that [OA] would increase his fluoxetine back to 20mg every day. I will be grateful if you could amend his records.

I was asked if I could request that he is allowed extra time in his GCSEs exams. I do not think this is really my decision to make, but I would be happy to supply information to the college. [OA] agreed fully to share his ASD assessment report with them, I have previously passed on his educational psychology assessment with his consent. He is willing to have learning support involved in college. I understand they need to be involved any exam adjustments are to be made.

I have arranged a further appointment for Friday, 27 October 2017 at midday.

33. The most recent communication from Dr McCutcheon is a letter written to [OA]'s parents in response to a request from the appellant for information in terms of helping support [OA] in relation to his ASD diagnosis. Having referred to material provided the Doctor writes as follows:

Having known [OA] for some time now I can also point out some of the things I think would be helpful:

- [OA] is likely to find change difficult so it will be helpful if he is prepared for things in advance so that he knows what to expect.
- [OA] will benefit from clear, straightforward explanations in relation to things that are happening or things that are expected of him. I would avoid using more abstract language.
- [OA] is likely to benefit from environments that are clearly structured and where there is a clear routine that he knows what to expect and what is expected of him.
- [OA] may need some support in terms of understanding situations that come up, particularly in relation to social interactions either at college or in the work setting. It



may be helpful for those he is working with to be aware that he may have some difficulties in this area.

It is reassuring that [OA] has settled in well at college and seems to be doing reasonably well despite there not being a lot of support around his ASD diagnosis for most of the time he has been there (as he did not initially want this). Even in this country [OA] would not receive life-long support from NHS mental health services in relation to his ASD diagnosis unless there were additional mental health needs. I hope that the diagnosis will be helpful for him and his family as well as others around him in terms of understanding why he may behave in certain ways at certain times and why he might find certain situations more difficult than other people might find them.

34. This evidence confirms [OA]'s diagnosis of ASD and in the letter of 15<sup>th</sup> February 2018 is advice in terms of how best to manage any change [OA] may face. It is interesting to note that Dr McCutcheon does not state that [OA] must not be returned to Iraq or removed from his current environment but flags up the need to prepare to ensure that [OA] is not unnecessarily distressed. It is also clear that [OA] has settled into a college environment and that the negative aspects recorded in the appellants evidence do not appear in the report of Dr McCutcheon although that may be as a result the fact they are based upon limited appointments within clinic rather than providing day-to-day care for [OA].
35. It is also not the case that there is any evidence of a diagnosis of additional mental health needs beyond the ASD diagnosis, indicating that ongoing care within the United Kingdom to the extent previously enjoyed is not likely to be the model for [OA] in future years. It is also the case that the focus of assisting [OA] is the provision of antidepressant medication Fluoxetine which appears to be assisting [OA].
36. As noted above, this matter has been adjourned awaiting the outcome of an expert report regarding the availability of treatment for autism spectrum disorder and obsessive-compulsive disorder in Iraq. That report, dated 27 February 2018 has been written by Dr Rebwar Fatah. In addition to commenting upon [OA], Doctor Fatah was asked a number of other questions regarding whether the appellant will be able to find work in Iraq, issues of relocation, availability to find accommodation without a sponsor, whether travelling around Iraq be a problem for a Sunni family all of which have been incorporated into the process of assessing the accommodation and financial points referred to above but which have not been accepted as determinative in light of the evidence as a whole, including the oral evidence of the appellant. Hereinafter this decision shall focus upon the question of the reports relevance to the position of [OA].
37. In relation to the availability of treatment for autistic spectrum disorder in Iraq the report states, inter alia, that medical care in Iraq does not adequately cater for the needs of persons with disabilities and refers to USAID and UNAMI/OHCHR sources indicating that the number of centres for treatment and rehabilitation of persons with disabilities is inadequate. Care for persons with psycho-social disabilities is very limited and that where it is offered it is at

- high prohibitive costs, with an institution which treated patients with Autism and Down Syndrome quoting the equivalent of roughly US\$250 a month.
38. The report refers to an autism centre in Kirkuk set up by a doctor who herself has two autistic children and who found no accommodation for them within the existing education or medical system in Iraq. The Foundation for Relief is said to have helped the Autism Centre to expand which now caters for 85 children looked after by 22 carers. The report refers to a further article of March 2014 stating there are no precise statistics for autism in Iraq and a study by the Centre for Educational and Psychological Research stating there were more than 7000 children in Iraq dealing with autism drawing the numbers from 16 centres for autism scattered across Iraq, including the IKR. AI Monitor is said to have spoken to a paediatrician who specialises in neurological disorders including autism, who is described as attempting to support the work of community centres in Baghdad.
39. It is said treatment in Iraq is generally limited to private institutions which are not supervised by official bodies, and thus AI-Monitor could not confirm the suitability of the methods used for treatment.
40. It is noted at [64] of the report that following Iraq's accession to the UN Convention on the Rights of Persons with Disabilities, Iraq ratified Law 38 in 2013, on the care of persons with disabilities and special needs. It is said this law aims at providing care to persons with disabilities and special needs and that under Law 38 a person with disabilities is defined as a person who is "unable to participate in full or in part in the community as a result of having physical, mental or sensual impairment, resulting in malfunctioning performance". The report records criticism of the definition of 'disability' falling short of the requirements of the Convention as it characterises persons with disabilities as passively receiving care and assistance and reinforces the perception of disabilities as medical/or charity/related issues rather than adopting a rights-based approach. Law 38 established a Commission on the care of persons with disabilities and special needs which became active in 2016 and had a budget in 2016 of 50 billion IQD. It is noted one of the initiatives to create a special ID card to ensure persons with disabilities receive benefits was hindered by technical and capacity problems. Persons with disabilities are eligible for financial support if they are below the poverty line and meet impairment rating requirements, which is a factual issue question in each case.
41. So far as medication is concerned; the report notes that Fluoxetine is traded in Iraq under the names Fluxil and Margilan . The report author states he contacted an internal medicine resident at the Bagdad Medical City complex to enquire about the availability and price of Fluoxetine but was informed this is not available in public clinics but that it is available in private clinics the price of which depends on the date of manufacture with more recently produced packets costing roughly the equivalent of US\$50 and older packets costing US\$20.
42. In section 7 of the report, in which Dr Fatah sets out his overall summary and conclusions, he writes:

106. Availability and treatment for autism spectrum disorder and obsessive-compulsive disorder:

the objective evidence shows that care for children and adults with autism is very limited in Iraq. Care for persons with disabilities in Iraq in general has been criticised by international organisations as being inadequate. Care for persons with disabilities in Iraq lags behind care in Western countries. This is not only due to resources but also due to cultural insensitivity to the needs of persons with disabilities and their families.

107. The objective evidence provides that a few small, mostly privately created centres exist to cater to the needs of children with autism, but that these are generally not able to cater to very many such children due to financial resources or are otherwise restrictively expensive.
108. In theory, persons with disabilities are entitled to some social benefits, under Law 38 of 2013, but this has been criticised by USADI and UNAMI/OHCHR as not necessarily being the case in practice, or inadequate when it is the case. UNAMI/OHCHR state that most families in Iraq are mainly only able to offer moral and spiritual support to their families.
109. I have contacted a medical practitioner in Baghdad who informs me that Fluoxetine is not available in public clinics, but is available in private clinics, at a cost of between US\$20-US\$50 for a packet, depending on the manufacturing date of the drug.

43. ASD is a developmental disorder that affects communication and behaviour indicating that it is not an “illness” in the same way that a medical practitioner may classify depression. This is supported by the last letter from Dr McCutcheon where she refers to ongoing support not being available for a person suffering ASD unless there are other mental health issues requiring intervention/treatment.
44. Autism is known as a “spectrum” disorder because there is wide variation in the type and severity of symptoms people experience. ASD occurs in all ethnic, racial, and economic groups. Although ASD can be a lifelong disorder, treatments and services can improve a person’s symptoms and ability to function. Some people are defined with severe ASD others being afflicted at a lower level. An important aspect with regard to a person such as Omer is to identify the type and severity of his symptoms which are clearly set out in Dr McCutcheon’s written material.
45. It is clear that although [OA] suffers as a result of his presentation he is able to live at home with his parents, albeit that they have to make adjustments to accommodate his particular requirements to the detriment of the family’s home, and that he is able to attend mainstream college and sit GCSE examinations even though he may need more than one attempt to pass the same. [OA] seems to have an ability in mathematics in an abstract sense if not in a practical “real-world” sense, indicating that he has some expertise.
46. This is not a case in which the appellant makes out that returning the family to Iraq would result in a situation where [OA] is likely to suffer a profound mental collapse, possibly amounting to a destruction of his personality, if he is properly prepared and supported as noted by Dr McCutcheon.

47. The appellant has been found not to have made out that he cannot seek employment in Iraq and is clearly a competent individual who will no doubt be able to seek such employment in the sector in which he has clear expertise. Although the appellant was made redundant in the UAE he travelled there with his family for the purposes of seeking employment in the past and it is not made out that he would not be able to seek employment to support his family elsewhere, if required. My primary finding is, however, that such employment and housing is available within Iraq as noted above.
48. It is not made out the appellant would have difficulty obtaining the documents required to access serviceds in Baghdad, and he would not require a sponsor within Baghdad as he has his own property to which he can return.
49. There have been a number of cases relating to the test to be applied in a removal case where medical issues arise, the most recent of which is *AM (Zimbabwe) v SSHD* [2018] EWCA Civ 64, which concluding that whilst N was binding authority up to Supreme Court level, Paposhvili relaxed the test only to a very modest extent. The boundary had simply shifted from being defined by imminence of death in the removing state even with treatment to the imminence of intense suffering or death in the receiving state occurring because of the lack of treatment previously available in the removing state.
50. The appellants evidence regarding the availability of the tablet taken by [OA] is extremely limited and is composed of one call that appears to have been made by the author of the report to one individual. It is not known what experience the individual the expert called has of the supply of medication generally in Iraq and was only able to speak of the availability in limited circumstances. Even accepting that provision of the particular drug may be limited under the name referred to by the author, does that also refer to the drug by the different names by which the drug is known within Iraq? In any event, at its highest, the drug is available the issue being that of cost. It is not made out that the appellant would not be able to obtain the drug which could assist in maintaining [OA]'s condition/presentation.
51. The family support required by [OA] will still be available and it has not been shown, even if [OA] experiences some harassment and discrimination in Iraq as a result of his condition, that this will cross the high threshold of article 3 or breach article 8 ECHR .

## **Other issues**

52. So far as the other children are concerned they will return with their parents to Iraq and it has not been made out that their best interests require any minor member of the family to remain in the United Kingdom as the determinative factor. It is accepted that returning the family to Iraq, a country that has experienced horrendous difficulties in recent years, will be difficult and that a period of readjustment will be required but it is not made out the children will not be able to benefit from the support provided by their parents in helping them readjust to life in the country of which they are all nationals, including language issues. It is not made out the children will not be able to receive a

proper education or will face a real risk as a result of the ongoing situation sufficient to entitle them to a grant of any form of international protection. No insurmountable obstacles have been made out to return.

## Discussion

53. In any application outside the immigration rules it is necessary to take a structured approach. The above sets out the findings in relation to which such an assessment must be made. It is also beneficial to following the five-step test recommended by the House of Lords in Razgar [2004] UKHL 27 in which it was found:
17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:
- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
  - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
  - (3) If so, is such interference in accordance with the law?
  - (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
  - (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?
54. In this case the appellant enjoys family life with his wife and children and they with each other. If the family are returned as a unit there will not be consequences of such gravity as potentially to engage the operation of article 8, so far as their family life is concerned, as that will continue within the family unit in Iraq. It is accepted the private life in the United Kingdom will be disrupted although not made out that private life formed around schools, friends, work or similar matters cannot be enjoyed in Iraq.
55. Any disruption is in accordance with the law and necessary in a democratic society. None of these issues was disputed by the appellant at the hearing in any event.
56. The issue in this case has always been the proportionality of the decision. The appellant claims that he cannot return to Iraq because of the impact upon [OA] and the family, the fact he will not be able to seek employment, that he will be unemployed, will not have accommodation, that the family will be destitute,

- and the protection issues which have been found to lack credibility. The appellant's original claim for international protection relating to the situation in his home area were rejected as not being credible.
57. The only matter the appellant has available to him is the human rights aspect in relation to which the appellant cannot succeed under the immigration rules hence his appeal being argued outside the rules.
58. The appellant entered the United Kingdom as a visitor and overstayed. He applied for international protection but once he became appeal rights exhausted the appellant had no right to remain in the United Kingdom. All the private life he seeks to rely upon since his lawful leave expired has been developed at a time the appellant's status has been precarious. Accordingly section 117B provides that little weight should be attached to a private life formed in such circumstances.
59. It is accepted the appellant speaks English and obtained an offer of employment and would have pursued the employment offered with Knauf had it not been taken from him as a result of the mistake made by the employer set out above. The reality is, however, that the appellant has remained dependent upon public funds in the United Kingdom.
60. The appellant has accommodation available in Baghdad, it has not been made out he will not be able to re-enter Baghdad or not possess the documents required to access services. It is not made out the appellant would not be able to obtain employment or would not be able to provide for his family as he has in the past. It is not made out the appellant is entitled to a grant of international protection or on human rights grounds for any of the reasons set out in relevant country guidance caselaw.
61. In relation to the children, [OA]'s best interests may be for him to remain in the United Kingdom if he was to continue to be assisted by the Child and Adolescent Services but the letter from Dr McCutcheon makes it clear that such assistance as he received in the past would not continue unless there was an underlying mental health condition of which none has been identified in the evidence. It is also the case that [OA], who was born on the 19 July 2000 is, at the date of this judgment, an adult as he is now 18 years of age and may, by that reason alone, no longer be entitled to child and adolescent services. It was not made out [OA] will require ongoing assistance from adult mental health services. [OA]'s needs appear to be for clear explanation and understanding, family support, and the antidepressant referred to which is available in Iraq.
62. Whilst it is accepted the appellant has maintained a concerted attempt to prevent removal and to allow the family to stay in the United Kingdom; matters that he has claimed have occurred or that he seeks to rely on have been found to lack credibility or to be undermined by a consideration of the evidence as a whole. The appellant did not flee Iraq as a result of the threat he faced and came to the United Kingdom for the purposes of a holiday where he claimed he received advice that he could not return to Dubai as a result of his Visa being cancelled.
63. Having weighed up the competing aspects very carefully, and although there is great sympathy for the appellant and [OA] for what will be another change in

their situation, [OA] left Iraq and travelled to the UAE and then the United Kingdom and it is not made out that with proper support he would not be able to return to Iraq. I find the best interests of the children are to remain with their parents where they can continue their life together as family unit in Iraq. I find the respondent has discharged the burden of proof upon her to the required standard to show that the decision to return the appellant and the family to Iraq is proportionate pursuant to article 8 ECHR. It is neither unreasonable or unduly harsh

**Decision**

64. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

65. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 23 July 2018