



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

Appeal Numbers: PA/08060/2016
PA/09238/2016
PA/09240/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2017**

**Decision & Reasons
Promulgated
On 18 January 2018**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**CAA (FIRST APPELLANT)
MJ (SECOND APPELLANT)
BAJ (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr Bramble, Senior Home Office Presenting Officer

For the Respondents: Mr A Malik, instructed by Arden Solicitors Advocates

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Phull dated 7 April 2017, which allowed the protection claims of the three appellants.

2. For the purposes of this decision I refer to the Secretary of State as the respondent and to KAA, MJ and BAJ as the appellants, reflecting their positions as they were before the First-tier Tribunal.
3. 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.
4. The three appellants are a mother and her two children, MJ, her son and BAJ her adult daughter. The claims of the children do not differ from their mother and for the purposes of this decision I can refer only to KAA's claim in the main.
5. The family are Shia Muslims from Baghdad. The appellant's husband had a shop selling car parts, partly to the government. At the end of July 2005 he received threats because of his involvement with the government. The family then relocated to the north of Iraq but on 14 September 2005 decided to return to their home in Baghdad. On that journey they were stopped on the road by militia and the appellant's husband and one of her sons was killed. The appellant was injured and her daughter, BAJ, was in a coma for three months. After BAJ recovered, the appellant moved the family to Syria. She returned to Iraq in 2007 because she had no money left on which to survive in Syria.
6. The appellant and her remaining children returned to Baghdad and lived there until 2014. The appellant took up the management of her husband's business in order to support the family. In 2014 she noticed unidentified individuals approaching her car. The next day she noticed that the music in the car had been replaced with CDs played by Al-Qaeda. There was also a threatening letter in the car that if she did not leave the area her son would be killed. Three days later another car pulled up outside the appellant's house and a masked man approached her son. Afraid that MJ was about to be kidnapped the appellant grabbed her son, keeping him safe.
7. The appellant became fearful that the threats to her son would continue and that there as a risk to herself and all of the family because they were Shia Muslims living in a predominantly Sunni Muslim area and because in religious terms they were relatively liberal, her daughters not covering their hair with a hijab. The appellant also believed that there was a long-running adverse view of her in the area because of her husband's involvement with the government. She decided to sell the contents of her house, her jewellery and left Iraq with MJ and BAJ.
8. The appellant also claimed that in addition to the risks to herself and her family set out above, her own mental health made it very difficult for her to return to Iraq.

9. The appellants' asylum claim was first considered by First-tier Tribunal Judge Powell in a decision dated 27 July 2015. The claim was refused. First-tier Tribunal Judge Powell accepted that the attack in 2005 had taken place but concluded that the nature of the attack had been different and that there was no risk on return.
10. The appellant made further submissions supported by a country report prepared by Dr Fatah Rebwar dated 27 June 2016 and a psychiatric report dated 2 May 2016 from Dr Husni. The respondent refused the claim but accepted that the further submissions amounted to a fresh claim so an appeal right arose.
11. The appeals against that refusal came before the First-tier Tribunal on 10 March 2017. Judge Phull found that the asylum claim succeeded on the basis of the materials provided by Dr Rebwar and Dr Husni as well as wider country material, in particular finding at [36] that the appellant is a refugee as a lone woman, a Shia Muslim without male protection in Iraq.
12. Judge Phull gave her reasons as follows:
 - "18. My starting point is the decision of Judge Powell promulgated 27 July 2015. Judge Powell accepted that an attack took place in 2005 but did not accept that the appellant's belief about it is reliable or that it was linked to threats against the appellant's husband. Mr Wilcox stated in submissions, that the attack was not in dispute and neither were the injuries, sustained by the appellant and her children.
 19. I have had regard to the case of *BA (returns to Baghdad) Iraq CG* [2017] UKUT0018 (IAC) and the case of *AA (article 15 (c)) Iraq CG* [2015] UKUT00544 (IAC).
 20. I have also considered the country expert report of Dr Fatah and Dr Husni regarding the appellant's mental health. Dr Fatah has prepared a detailed expert report dated the 27 June 2016 on the appellant's specific account. Both professionals have summarised their qualifications and credentials.
 21. Dr Fatah has produced many reports and five Country Guidance case reports from November 2011 to May 2015. He regularly visits the MENA region with the most recent visit in 2015, assessing the impact of the evolving security situation on the region. The appellant's lawyers's instructed him to compile an objective expert report on this appellant. Dr Fatah supports his opinion with references to sourced and credible background reports and articles.
 22. Dr Husni is a Consultant Psychiatrist in general adult psychiatry. He was instructed to prepare a report at the instructions of the appellant's lawyers. Dr Husni has published numerous papers in peer review journals and is approved by the Secretary of State for Health under the 1983 Mental Health Act as having experience in the diagnosis and management of mental illness.

23. I am satisfied that Dr Fatah and Dr Husni have the necessary knowledge and experience to comment upon the matters raised in this case. Both have taken a careful approach to the appellant's evidence and considered her evidence, with reference to objective material in the public domain where applicable. I would add that Mr Wilcox made no criticism of the said reports. I therefore found the reports to provide strong supporting evidence as to the risks faced by the appellant on return, should I find her account to be credible.
24. The appellant says that there was an attempt by a gang to kidnap her son in 2014 and she then received threats. The respondent does not accept that there was an attempt to kidnap as claimed.
25. I found the appellant to be a credible witness and accept her evidence that there was a threat to her son being kidnapped because her claim is supported by Dr Fatah's report that, '... kidnapping in (sic) known to be a problem ... He refers to objective evidence in IHS Jane's, 'Unidentified militants kidnap child in Iraq's Baghdad 17 September 2015; a report by Alaraby, 'Kidnapped by your neighbours and friends in Iraq' 20 September 2015 and a report by MME, 'Kidnappings greater threat to Baghdad than Islamic State: top official' 13 February 2015 and Al-Jazeera, "which kidnap victim is more valuable - US or Iraqi?" 29 January 2016. Dr Fatah states that UK Foreign and Commonwealth Office also notes the, "high threat of kidnapping in Iraq from both Daesh (ISIS) and other terrorist and militant groups" Baghdad's top security official ..., was quoted in February 2015 as saying that the increase in the number of kidnappings posed a greater threat to the capital's security than ISIS and that kidnappings were conducted for both personal gain (by gangs in search of ransom) and with sectarian motives ... Targets of kidnapping include children."
26. The appellant's evidence is that she has two brothers, one in Turkey and the other in Jordan. I accept her evidence that she is not in contact with her brother in Turkey and does not know his whereabouts. I find that she was candid in her evidence that she is in contact with her brother in Jordan and contacted him for evidence of his status there. He sent documents that also include his tenancy agreement copies of which were translated, filed and served. Mr Wilcox did not challenge the documents. I am satisfied therefore that there is a reasonable likelihood that the appellant's brother lives in Jordan.
27. Mr Wilcox alleged the appellant's brother could return to Iraq or he could provide her with money so that she could return with her children. Alternatively her children could go with her, work and support her there.
28. I take a different view for the following reasons. The respondent accepts the appellant suffers from PTSD and has not taken with Dr Husni's report. There was no criticism that the appellant has had suicidal ideation. I accept Dr Husni's diagnosis that the appellant suffers with PTSD because of a consequence of the attack of 2015 and the events in 2014. Dr Fatah in his expert

opinion states that the appellant as a lone woman with a young daughter, and without a male protection is at risk in Iraq. I find as a matter of fact that the appellant cannot look to Mortada, her minor son, to be her male protector in Iraq.

29. I also find that the appellant would be at risk in Iraq simply for being a lone woman, Shia by religion, having lived for a lengthy period outside of Iraq. Dr Fatah says in his report that, "most women in Iraq rely on the family's social networks. Ms Al Azawi no longer has any family in Baghdad or any parts of Iraq. It would therefore be more difficult for her to relocate without any support."
30. I accept that there is a general discrimination in the country against Shia Muslims largely from Sunni Muslims and in particular by ISIS who consider anyone that does not follow the strict Islamic faith to be infidels, which puts the appellant and her children, at great risk in the country.
31. I find that the appellant is a lone woman and if returned to Iraq she would be returning with two children, a minor son, and Buthania who is a young single woman. I find that the appellant has no ties to Iraq. She is a widow; the male members of her family are outside Iraq and cannot take care of her.
32. The respondent argues that the appellant could relocate to the northern part of Iraq, which is occupied by the Shia. However I take a different view because I find that she cannot return to Baghdad or relocate within the country because the evidence in Dr Fatah's report supports her fear about return and relocation. The appellant says her daughter does not wear the Hijab, which would cause difficulties for the appellant and her children. Dr Fatah says in this report that, "the number of unveiled women in Iraq has declined in recent years. It is likely that as a woman who has returned from the West, if Ms Al Azawi or her children's mannerisms and clothing are reflective of her absence from Iraq and residence in the West, it is plausible that she will be a soft target for non-state actors and harassment. Ms Al Azawi may be targeted for not adhering to the strict ideology of militia groups. She may also be at risk of being ostracised by the community ... Iraq remains unstable ... The current security situation in Iraq is rather stretched in that it is unpredictable in becoming increasingly fragmented. Certain no go areas due to ISIS control has led to a substantial increase in IDPs ... Ms Al Azawi's options of relocation to Iraq proper are severely limited by the unstable security environment and the incompetence of the security forces in bringing stability."
33. I find the respondent has failed to consider how, the appellant a lone woman with two young children, would relocate from Baghdad to the south of the country without attracting adverse attention. Although Dr Fatah says that the appellant would not face religious problems in the south of Iraq, I find there is a reasonable likelihood that the risk of persecution remains because she cannot relocate to the south without male protection. I find she has no family in Iraq. The respondent accepts that the

appellant suffers with PTSD. I find there is a reasonable likelihood that her mental state would impede her ability to secure work and support her children placing them all at risk on return.

34. In terms of relocation to the Kurdish regional governate, I find this is not possible because the appellant is an Arab. The case "AA" says the respondent will only return an appellant if they originate from the Kurdish area and have been pre-cleared with the Kurdish authorities. I find the appellant will not be able to internally relocate within Iraq. She would be returning as a single woman with two children, it would be unreasonable to expect her to return where she has no family for support and her life is threatened.
 35. The evidence is that the appellant has looked to the authorities in the past to support her. The police were unwilling or unable to do so, which led the appellant to flee the country. The objective evidence says that the authorities generally are unable to provide effective protection because of the security situation on the ground. Dr Fatah, refers to 'Reuters, Iraqi widows, mothers and girls face heightened risks in displaced camps, 7 April 2016' as evidence that the appellant and her children, are particularly vulnerable if returned to Iraq without a male figurehead in the family (para 214, report). I find the appellant cannot relocate because of her mental health issues and the fact that she has no male protection in the country, which would place her and her children at significant risk on return to Iraq."
13. The respondent was granted permission to appeal to the Upper Tribunal by the First-tier in a decision dated 21 August 2017 in which it was found that all grounds were arguable.
 14. The respondent's grounds began with a challenge in paragraphs 2 and 3 to the inclusion of BAJ as a dependant of the further submissions. In paragraph 3 of the refusal letter, the respondent had clearly indicated that BAJ could not be a dependant in the further submissions claim and was therefore not a party to the refusal and there could be no right of appeal or allowed appeal for her in the current circumstances. The refusal letter dated 8 July 2016 at paragraph 3 stated:
 - "3. Please note that in line with the Immigration Rules, your eldest child 'BAJ' cannot be a dependant on this further submissions claim. As she has already turned 18 years of age prior to the further submissions claim of 7/7/2016, the following is noted from the guidance;
'3.8 Dependants
Where a spouse, civil partner, unmarried or same-sex partner or minor child of the principal claimant was treated as a dependant on the initial asylum or human rights claim and still wishes to be treated as such, they should continue to be considered as a dependant on the further submissions. See paragraph 349 of the Immigration Rules for the definition of a dependant in asylum cases. Where a minor child was treated as a dependant on the initial asylum claim but turns 18 before further submission are submitted, they will need to make a first

protection claim or apply for leave to remain in their own right. See the Dependants and former dependants instruction for further guidance”.

15. I can deal with this matter relatively briefly. The defence to the challenge on behalf of the appellants, in particular BAJ, appeared to be that notwithstanding the clear contents of paragraph 3 of the refusal letter, she had lodged an appeal which the First-tier Tribunal had admitted and the point was not specifically put to Judge Phull at the hearing on 10 March 2017. It may well be the case that the issue was not argued overtly before Judge Phull but it remains the case that it was not open to her to assume jurisdiction where BAJ simply could not have been a party to the matter. Nothing indicates that BAJ made her own independent further submissions either in line with what the main appellant put forward or on any other basis. The further submissions referred her only as a dependent of her mother. It is my conclusion that it was a material error of law to include BAJ as a dependant in this matter where she was an adult at the date of the further submissions. The decision of Judge Phull, insofar as it includes jurisdiction for BAJ, is therefore in error, must be set aside and BAJ can play no further part in this appeal.
16. The grounds of appeal went on to maintain in paragraphs 4 and 5 that First-tier Tribunal Judge Phull took an incorrect approach to the decision of First-tier Tribunal Judge Powell in which the appellant was not found materially credible and did not follow the guidance in **Devaseelan**.
17. The third ground was that even if the claim to be at risk in Baghdad was made out, nothing explained lawfully why she and her family could not relocate to another part of southern Iraq. The respondent maintained that the appellant had male family members, her brothers, who, even if they lived abroad, could be expected to return to a sister or certainly provide her with some support. The respondent also found that the decision was in error where the appellants’ Shia ethnicity or Shia religion was cited as a reason for her to be at risk on return when the majority of Iraqi citizens were Shia and the government comprised mainly Shia Muslims. It was maintained that she would retain a network of friends and extended family and that her period in the UK would not be sufficient to raise her profile as somebody of a westernised profile who might be at risk from extreme Sunni Muslims.
18. It is not my view that the challenge on the basis of **Devaseelan** and the correct approach to the findings of First-tier Tribunal Judge Powell is made out. As shown in the section from the decision of Judge Phull set out above, at [18] she referred in terms to the decision of Judge Powell being the “starting point” of her consideration. The summary of what Judge Powell found and the limited credibility findings that could assist the appellant were summarised correctly in the remainder of [18].
19. Judge Phull’s consideration then turned to the correct country guidance case and the new materials provided by Dr Rebwar and Dr Husni. She

identified correctly that Dr Rebwar is an accepted expert on Iraq having featured in a number of country guidance cases and that he had been properly instructed by the appellants' lawyers. Judge Phull also comments at [22] on Dr Husni's qualifications and experience making him a suitable person to comment on the appellant's mental health.


20. Having identified particularly salient features of the new materials relied upon, the finding at [23] appears to me to show, when the decision is read fairly, why First-tier Tribunal Judge Phull found that the reports of Dr Rebwar and Dr Husni distinguished the findings made by First-tier Tribunal Judge Powell in July 2015. The whole tenor of paragraph [18] - [23] is that, having considered what was found against the appellant in 2015, the new materials were reliable and sufficient to show "strong supporting evidence of the risks faced on return" for this appellant.
21. Further, at [25] the judge said specifically that she found the appellant on this occasion to be a credible witness because it was supported by the evidence of Dr Rebwar on the likelihood of kidnapping as described by the appellant. The judge identifies the specific paragraphs from Dr Rebwar's report which supported the appellant's account. For these reasons, the respondent's second ground of appeal is not made out.
22. It is also my conclusion that the third ground of appeal is not made out. The finding that the appellant could not return to Iraq and relocate without facing undue harshness did not arise because of her Shia religion or her daughter's liberal presentation as women not wearing a hijab or veil. The appellant's profile was found to be as already set out from [36] a "lone woman, a Shia Muslim without male protection in Iraq". The First-tier Tribunal Judge was clear that the appellant's evidence about her brothers was credible, the appellant having been "candid" about being in contact with one brother who lives in Jordan and being unable to locate her other brother who is understood to be in Turkey. At [27] the judge considered specifically the respondent's submission that one of the brothers could be expected to return to Iraq to assist her or could provide her with financial support if she returned. At [28] the judge finds that the appellant's mental health, her claim on that issue being supported by the report of Dr Husni, unchallenged by the respondent, indicated that the appellant could not be expected to return as a lone woman with a young daughter and without male protection.
23. At [29] the judge identified a further factor, the appellant having been outside of Iraq and her social networks having become reduced as a result. The grounds take issue with the amount of time that the appellant has been outside of the country but it appears to me that a period of approximately three years was sufficient for the judge to reach this conclusion which was one open to her.
24. At [32] the judge also explains why it would be unduly harsh for the appellant to relocate to a different part of southern Iraq which was

occupied by Shia rather than Sunni Muslims. Again, the report of Dr Fatah entitled the First-tier Tribunal Judge here to find that someone in her position would not be able to do so without serious difficulties, that becoming additionally so for this appellant given her mental health problems. It was found that the appellant could not relocate given the liberal presentation of the family which would make them a “soft target” for a number of non-state actors wherever they went to in Iraq and that the family would be very noticeable where they were a household headed by a lone woman, the appellant being additionally vulnerable because of her mental health problems.

25. It is therefore my conclusion that the decision of the First-tier Tribunal granting the asylum and human rights appeals of KAA and MJ does not disclose an error on a point of law and shall stand.
26. In the event that BAJ makes further submissions for leave to remain, the upheld judicial findings on the claim of her mother and brother will no doubt form part of the respondent’s consideration.

Notice of Decision

27. The decision of the First-tier Tribunal concerning KAA and MJ does not disclose an error on a point of law and shall stand.
28. The decision of the First-tier Tribunal concerning BAJ discloses material error and is set aside. There is no valid appeal for BAJ before the Tribunal.

Signed 

Date: 16 January 2018

Upper Tribunal Judge Pitt