



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10012/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
Oral decision given following hearing  
On 29 August 2018

Decision & Reasons Promulgated  
On 20 September 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[H S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr A Bandagani, Counsel instructed by Cardinal Hume Centre

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State against a decision of the First-tier Tribunal. For ease of reference I shall throughout this decision refer to the Secretary

of State who was the original respondent as “the Secretary of State” and to [HS], who was the original appellant, as “the claimant”.

2. The claimant is a national of Iraq who was born on 8 August 1988. He claims to have left Iraq at the end of December 2015 arriving in the UK on 29 March 2015 clandestinely. He claimed asylum the following day. Having been interviewed, both in the screening interview and in the full asylum interview, and having provided a witness statement together with various documentary evidence including a citizen certificate, a residence card for Basra, a driving licence, an election card, a military ID card and employment card and a copy of the divorce document and a letter from Kingston Hospital, his claim was considered by the Secretary of State but refused in a decision made on 26 September 2017. The refusal letter gave reasons for the rejection of the claim and runs to some sixteen pages and some 112 numbered paragraphs (the letter itself comes to 19 pages, but the last three are in standard form advising the claimant as to his right of appeal and so on).
3. The claimant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Greasley sitting at Hatton Cross on 1 June 2018. In a Decision and Reasons promulgated on 13 June 2018 Judge Greasley allowed his appeal on asylum grounds and under Article 2 of the ECHR.
4. The Secretary of State now appeals against this decision, permission having been granted by First-tier Tribunal Judge Landes on 6 July 2018.
5. The basis of the claimant’s case can be set out very briefly. He comes from a family which is very closely connected to the Al Badr political party in Iraq. He has fallen out of favour, both with his family and in time that party for two reasons: first, he has refused to fight for the Al Badr Party against ISIS; and secondly, which is related to the first reason, he has no religious convictions and may be perceived to be an apostate. The reason he does not wish to fight for Al Badr is because he does not wish to kill for a party whose motivation is religious values in which he does not believe.
6. There are various matters asserted by the claimant which supports his claim. He claims to have expressed views to former work colleagues at the Basra District Council which caused them to perceive that he was an atheist, and because they wanted to harm him, they stole his wallet which contained his ID cards because it is an offence not to have ID cards. He was imprisoned for three days and fined when he reported the loss as he was obliged to because otherwise he would have had no means of identification, and while he was in prison he was beaten and sexually assaulted. There was evidence of scarring on his body which was consistent with his account. The claimant also claimed that he had received a letter from Al Badr through the post which had told him he would have to leave Iraq and which letter contained a bullet which was a warning of what was likely to happen to him if he did not. He was not able to produce this letter but he did produce a photocopy of a police report which, if genuine, confirmed that he had reported receiving the letter (which the police had retained) and which showed that the police had advised the claimant that he must leave his job and must also leave Basra.

7. In his asylum statement the claimant had referred to his half-brother Osama being a member of the Badr organisation and he was said to work in a Government office at a national security organisation in Baghdad. It is also stated that his brother had asked him to join the Badr military to fight against ISIS (referred to in that interview as Daesh) but he had refused to do so. He had also referred to a threat having been made from a paternal cousin in Iraq on Facebook. The claimant blocked him from Facebook.
8. The Secretary of State gave a number of reasons for rejecting the claim, but essentially it was rejected on credibility grounds. The reasons relied upon in this hearing were initially from paragraph 43 onwards, although in the course of argument Mr Melvin only relied upon the reasons set out from paragraph 51 to 60 of the refusal letter. The first matter which was initially relied upon was that the claimant had claimed that he did not wish to kill as a member of the Badr Party, but that was inconsistent with what he had said in his asylum interview which was that he would be prepared to shoot people as part of his duty, his having been employed as a bodyguard in Baghdad. When one looks at the reasons given from 51 to 60, the Secretary of State suggested firstly that the letter from Kingston Hospital in support of his claim that he had suffered abuse "does not state that your current physical and mental problems are diagnostic of the treatment you claim to have suffered whilst detained". It is then said that it was only speculation as to whom the letter he says he had received which was said to have told him to leave Iraq (and which contained a bullet) was from. It was noted that he had claimed that his father had reported this to the police who had kept the letter but taken no action, but that the translated documents which had been submitted by the claimant which were said to have been from the police stated that the letter said that he had to leave his job and his residence in the Basra Governance or he would be subject to retribution which was inconsistent with his original claim and "undermines your claim". It was also said that although he had claimed that he had been forced to leave Iraq due to the threats he had experienced and that he could not go to the police because he believed they would not provide him with protection, it appeared that the police had not refused to help him or his father.
9. It was also noted that evidence had not been given to support his claim to have been threatened on Facebook by his paternal cousin. Then at paragraph 60 it was said on behalf of the Secretary of State that as the claimant's claim to be an atheist had been rejected "due to the inconsistencies outlined above" it was not accepted that he had been threatened by his half-brother due to his religious views as claimed, or that he had been threatened by his paternal cousin, ISIS or any other Islamic group due to his religion (that is his effective lack of religion).
10. In his decision Judge Greasley first of all recorded at paragraphs 6 and 7 that he had heard oral evidence from the claimant and also submissions on behalf of both representatives, all of which were set out in the Record of Proceedings and had been taken into account. At paragraph 7 he noted that he had taken account of the respective bundles together with the objective evidence (which is now more often referred to as background evidence). At paragraph 9 he set out the burden and standard of proof and there is no challenge to what he said in that regard. He also at paragraph 10 noted that the immigration history was relevant to his consideration of

the claimant's case. The history, as claimed by the claimant, was then set out and the judge also at paragraph 26 noted that the Secretary of State had considered the provisions of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 which provides that the fact that a claim was not made at the first available opportunity must be given some weight when considering the credibility of the claim, and as the judge remarks, "It was noted the appellant had produced a forged passport to Home Office officials as if it were a valid passport" and that "He had also travelled through France, Germany and Italy" which were considered safe countries, but that "He had remained in each country with sufficient time to claim asylum in each of them and he had failed to take advantage of a reasonable opportunity to make an asylum or human rights claim". The judge in his final sentence records the Secretary of State's position (from which he did not demur) that "These were actions which had damaged his credibility by virtue of the operation of **Section 8(3)(b)** and **8(4)**".

11. The judge also records the Secretary of State's position as found within the refusal letter that "there was a reasonable opportunity for internal relocation within Iraq as the appellant had only claimed that he feared returning to Basra". That assertion by the Secretary of State was set out in detail within paragraph 27.
12. The extracts from the evidence were set out, although the evidence was not set out in full, and at paragraph 45 the judge refers to a photocopy Facebook entry which the claimant claimed he had made on Facebook and a response which was "provided through an interpreted document which the appellant claimed was from a paternal cousin in response to a statement by the appellant who declared his atheism". The reply from the cousin was set out. The judge also referred to the "helpful submissions from both representatives" which he had considered and for which he was grateful.
13. Then at paragraph 48 the judge stated that having considered the evidence in its totality "I make findings of fact on the account. I have also sought to focus upon the core and centrepiece of the claim, looking at the evidence in the round taking ... into account all relevant circumstances", relying on the well-known authority of *Chiver*.
14. At paragraph 51 the judge states as follows, which includes what is effectively a self-direction:
  - "51. Having considered the oral and documentary evidence in this appeal, and having applied the lower standard of proof in asylum appeals, I find for reasons that follow that this appeal must be allowed. I have considered the evidence cumulatively and in the round and conclude that the appellant is someone who will be at risk for a recognised refugee convention reason [on] return to Iraq".
15. He accepts essentially the evidence which had been given by the claimant, first that he had been genuinely employed as a bodyguard at Government ministerial level. He notes in this regard that there was corroborating documentary evidence to this effect which had been accepted by the Secretary of State in the refusal decision. He also accepted (still at paragraph 52) "that the appellant has expressed views to former work

colleagues that were at the very least perceived and treated as apostasy". At paragraph 53 the judge accepts that there was:

"credible evidence that the appellant's military and other identity cards were stolen which resulted in a sentence of imprisonment, albeit for a short period of time, and that the appellant refused to join the Badr military in 2014 to fight against ISIS and as a result I accept he suffered threats from his brother".

16. At paragraph 54 (and this is a part of the decision to which I shall have to return), the judge found as follows:

"54. Although there is no actual production of a letter containing a threat and a bullet, there is nonetheless a supporting police report which describes that the appellant's father, a lawyer, made formal complaint to the police authorities. I accept that this is likely to be a genuine document given the respondent's concession that documentation relating to his previous employment as a bodyguard has also been accepted. I also accept that the appellant has provided a credible explanation as regards his views on using a weapon in the line of duty as a serving bodyguard to a government minister, on the one hand, and refusing to kill in the name of the Islamic religion, on the other hand".

17. For all the reasons which he had given, at paragraph 55 the judge found that "there is credible evidence before the tribunal indicating that the appellant is an apostate or that he would on any reasonable view be perceived as an apostate who had turned his back on the Islamic faith". In light of that finding the judge then went on to consider whether as a consequence he would face a real risk of harm or ill-treatment for any recognised Refugee Convention reason.

18. Having found that the concept of religion included atheistic beliefs he concluded at paragraph 56 that if the claimant was found to be at risk this would be for a Refugee Convention reason based on religion.

19. At paragraph 58 the judge accepted that the claimant had provided "credible photographic evidence" in his bundle showing photographs with his father and brother "with Abdul Salem and other prominent Badr figures with screenshots showing prominent members of Badr figures at an engagement party where his brother and father were present". It was noted that this had not been formally challenged at the appeal hearing and it has not been challenged before this Tribunal either.

20. At paragraph 59 the judge accepted that there was "unchallenged objective material indicating that Badr are a Shia organisation with both a political and military wing and that the appellant has demonstrated to the lower standard of proof that he has had extensive links with the group having worked as a bodyguard in Baghdad for politicians". The judge also accepted:

“that the evidence demonstrates the appellant’s family have close links with the Badr military personal [should be “personnel”] and politicians and that effectively they do, in law, comprise state agents having influence throughout large areas of Iraq”.

21. Then at paragraph 60 the judge refers to a direction which had been given by the Tribunal to the Secretary of State on 25 October 2017 referring to various documentation which included the letter from the police station which has already been referred to and which indicated that a claim had been made to the police regarding the letter containing the bullet which the claimant had claimed had been sent. It was noted that the Secretary of State’s representative at that hearing “indicated that no response had been provided to this direction at any stage”. The judge was, in Mr Melvin’s words on behalf of the Secretary of State before this Tribunal, obviously very cross at this and the judge at paragraph 60 goes on to say that:

“I find this failure to respond suggests that the respondent has little regard or respect to the lawful and proper directions of the tribunal, which are intended to facilitate and examine all relevant admissible evidence and which is designed to ensure fairness to an appellant in proceedings”.

22. At paragraph 61 the judge goes on to find “that the respondent has effectively through such an omission failed to consider further supporting documentation adduced by the appellant”.
23. The Secretary of State’s grounds of appeal are considerably longer than is normally the case when the Secretary of State brings challenge to a decision of the First-tier Tribunal amounting to some nine pages in full. In Mr Melvin’s words on behalf of the Secretary of State before this Tribunal “I accept that there was over exuberance on the part of the grounds drafter”, and in fairness to Mr Melvin he very properly during the course of this hearing only sought to rely on what he claimed were the stronger points within the grounds.
24. Essentially there were two main grounds relied upon by Mr Melvin at the hearing. The first relates to what was said at paragraph 54 of the decision which was the passage where the judge, referring to what was said to be a genuine police report (which was a photocopy) had stated that “I accept that this is likely to be a genuine document given the respondent’s concession that documentation relating to his previous employment as a bodyguard has also been accepted”. In his submissions to this Tribunal Mr Bandagani accepted in terms that that sentence “in isolation doesn’t look good”, although his case was that this particular statement should not be seen in isolation and it has to be regarded in the context of the other evidence and factors to which the judge had regard.
25. Mr Melvin also submitted that the judge had dealt inadequately with the submissions which had been made before him and also that he had failed adequately to set out his reasons for rejecting the reasons given by the Secretary of State in the refusal letter. He referred in particular in this regard to the inconsistency (on the Secretary of State’s

case) between the account originally given by the claimant which was that he had been told he had to leave Iraq and what was said to be contained within the police report which was that he should leave his job and leave the Basra area.

26. Mr Melvin also sought to argue that in fact the Secretary of State's representative had been wrong to say that no response had been provided because in fact it had, but I do not need to consider this aspect of the appeal in any detail because the judge cannot be criticised for making findings on the basis of the evidence which had been put before him, and as far as the judge was concerned, the Secretary of State on her (as she still was) own case had not responded to the direction as she should have.
27. Although an argument had been raised in the grounds with regard to the availability of internal relocation and the judge's failure to have regard to this, in oral argument Mr Melvin accepted that this ground could not succeed as a stand-alone argument; however, although Mr Melvyn accepted that if the credibility findings are sustainable, it was open to the judge to find that the risk is from state agents and in these circumstances internal relocation would not realistically be available to the claimant, in the event that this Tribunal was to find that the credibility findings were not adequately reasoned, then the question of internal relocation would still arise for consideration.
28. I deal first of all with the submission made on behalf of the Secretary of State that the judge did not deal adequately with the case that had been advanced on behalf of the Secretary of State. Mr Bandagani's position is that, in his own words, "The judge did just enough". The judge, as was appropriate, considered the evidence in the round and he took into account that much of what the appellant had said was consistent with the background evidence.
29. Although the judge did not refer to evidence of scarring in terms, that was a part of the evidence with regard to which there was no inconsistency.
30. Although Mr Melvin sought to argue that the judge had not given adequate reasons for finding that he was satisfied with the explanation given by the claimant as to the apparent inconsistency with regard to his statement that he did not want to kill on behalf of the Badr but would be prepared to kill as part of his job, that in my judgement does not call for further explanation. There is a very clear distinction to be drawn between a person not being prepared to kill in the name of a religion in which he did not believe, which is effectively what the claimant has said he was not, while at the same time being prepared to use a weapon if need be in order legitimately to protect people who were being attacked. Similarly, I do not regard as a major inconsistency the distinction between the claimant having stated originally that he was told he had to leave Iraq with what is said in what is claimed to be the police report which is that he was advised to leave his job in Basra. On the claimant's case he was at risk anywhere in Iraq and while possibly a minor semantic point, it is not one to which the judge was required to give any great weight.

31. Having had regard to all the reasons set out within the refusal letter itself there is nothing in my judgement within that reasoning which specifically required the judge to set out his reasons for disagreeing with the Secretary of State's decision in any more detail than he did. Of course it would have been open to the judge to have given a lengthier and more detailed Decision, but he was not required to do so; he was required to consider all the evidence in the round which is what he said he did. It is not apparent from his decision that he did not do so.
32. So far as Mr Melvin's submission that the judge failed to deal adequately with the oral submissions which had been made, his difficulty in making this submission is that there was no evidence adduced as to what particular submissions the judge had not taken into account. I have seen the Record of Proceedings which the judge made and it is clear that he made a note of such submissions as had been made and as he stated in his decision had had these "helpful submissions" for which he was grateful in mind when reaching his decision.
33. The one area of the decision which does cause disquiet because as Mr Bandagani candidly and properly accepted "in isolation [it] doesn't look good" is where the judge accepted that the police report was likely to be a genuine document "given the respondent's concession [that] the documentation relating to his previous employment as a bodyguard has also been accepted". Obviously, the fact in isolation that the Secretary of State is accepting one document as genuine does not mean that anyone is obliged to accept that other documents are also genuine.
34. As part of his submissions on this point Mr Bandagani sought to rely on the Court of Appeal decision in *PJ (Sri Lanka)* [2014] EWCA Civ 1011 and particularly from paragraphs 29 to 32 where consideration was given to what presumptions there should be taken to be with regard to documents which were capable of being verified. Reference was made in that decision to the decision of the Grand Chamber in *Singh v Belgium* and also to the well known decision of *Tanveer Ahmed*. The Court of Appeal explained that in *Singh v Belgium* the Strasbourg court had "simply addressed one of the exceptional situations when national authorities should undertake a process of verification".
35. Essentially what Mr Bandagani submitted in this case was that the Secretary of State had effectively examined various documents. He referred in particular to the Secretary of State's decision letter at paragraph 32 where the Secretary of State had stated that the claimant's nationality had been accepted on the basis of documentary or other supporting evidence, these then being set out and including his Iraqi citizenship certificate and ID card in Arabic, his residence card for Basra, his Iraqi driver's licence, his election card, a copy of his military ID card, Iraqi Ministry of Interior and also the Basra District Council employment card. I do note however in this regard first that of course the Secretary of State has a motivation for accepting the identification of the claimant because failing this there would be no basis upon which he could properly be returned to Iraq. Also, that documentation does not include the police report. However, the Secretary of State was asked to consider specifically what was said to be the police report and the reason given for rejecting this document by the Secretary of



State was simply that it was a photocopy and was not fully translated, which upon its face is not necessarily an adequate reason for rejecting a document. Mr Bandagani submits also that it was clear that the Secretary of State had investigated some of the documents before accepting them and that these were not documents which could have come from anywhere; regarding the police report, this was a document sent from a named police station which could have been verified objectively and in these circumstances the Tribunal would not be entitled to reject the document as a false one.

36. In this regard in reply Mr Melvin submitted that the document ought to have been rejected under *Tanveer Ahmed* and that one could not reasonably expect the Home Office to go hunting round provincial police stations every time a document was relied upon which may or may not be genuine.
37. I have considered this aspect of the case very carefully indeed, and rose for a short period after the hearing to consider it further before giving this decision, but I do not consider that the reason given by the judge unfortunate though it is (and I entirely agree with Mr Bandagani that this on its own “doesn’t look good”) is a sufficient reason for setting aside the decision. While I agree with Mr Melvyn that just because the Secretary of State accepted some documents it does not follow that the police report is likely to be a genuine document as well, but the judge does not quite put it in these terms. Although one of the reasons that he finds it more likely than not that the document is genuine is because of the concession made with regard to other documents, (which I do not consider to be a good reason), the judge did consider the evidence in the round and it is also a notable feature of this particular appeal that the Secretary of State has at no time given reasons why that document should be rejected other than that it is a photocopy and there are difficulties in the translation. The fact that it is a photocopy is not in itself a reason for rejecting the document, and nor is the fact that there may be some minor problems in the translation. Under *Tanveer Ahmed* of course the judge would have been entitled to place no weight on the document, but only if having considered all the evidence in the round he felt that no reliance could be placed on it. Having considered all the evidence in the round and the consistency of a lot of that evidence the judge did not form that view and he was entitled to accept the document as a genuine one although, as I have already indicated, one of the reasons that he gave which relates to the concession made in respect of other documents is not a good one.
38. While I do not consider that the Secretary of State had been under a duty specifically to check the authenticity of the police report and I accept that certainly the Secretary of State cannot be expected in every case to do so, this document was certainly considered by the Secretary of State to be central to the credibility issue and this is a protection claim, and in these circumstances the Secretary of State’s failure to advance any convincing reasons why the document should be rejected has to be considered along with all the other evidence which the judge plainly had at the forefront of his mind. Given his credibility findings in general, the judge’s decision that he could place reliance on this document and that he accepted it was genuine, as he says on the balance of probability (which is certainly beyond the standard of proof he was required to apply) is not a material error such that the decision should be overturned.

39. It is of course not the function of this Tribunal in an appeal of this sort to make any findings as to what it would itself have decided on the basis of the material presented. The task of this Tribunal is to decide whether or not the judge applied the law properly and made findings which were open to him. In this case I find that the judge approached his task properly and the findings which he made were open to him. It follows that there being no material error of law in his decision the Secretary of State's appeal must be dismissed and I so find.

**Decision**

**There being no material error of law in the decision of First-tier Tribunal Judge Greasley, the Secretary of State's appeal against that decision is dismissed and Judge Greasley's decision, allowing the claimant's appeal, is affirmed.**

**No anonymity direction is made.**

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Upper Tribunal Judge Craig

Date: 14 September 2018