



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/10379/2017

THE IMMIGRATION ACTS

At Field House
on 09.04.2018

Decision & Reasons Promulgated
on 11.04.2018

Before:

Upper Tribunal Judge John FREEMAN

Between:

Ahmed ABDULLAH

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: Mr TDH Hodson (working under the supervision of Elder Rahimi)
For the respondent: Miss K Pal

DECISION AND REASONS

1. This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Tony Kelly), sitting at Hatton Cross on 14 November 2017, to dismiss an asylum and human rights appeal by a citizen of Iraq, born 1992. Permission was given in terms which provide no very clear indication of the issues, the main one being on the judge's application of *Devaseelan* (Second Appeals - ECHR - Extra-Territorial Effect) [2002] UKIAT 702*.
2. This appellant had made an illegal entry to this country in 2009, and claimed asylum: his appeal against refusal had been dismissed by Judge White in 2010. For no apparent reason, the Home Office took no further action on this before the appellant made further submissions in 2014, relying on article 15 (c) of the Qualification Directive. These were eventually refused too, on 2 October 2017.

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

3. The appellant had given an account on his original claim of his father having been killed in 2009 by persons unknown, because he had been working as a driver for the United States forces: he himself had left Iraq shortly after. Since the appellant had been fingerprinted by the Greek authorities on Samos in October 2008, Judge White disbelieved this account, and rejected the authenticity of the documents relied on to support it, as he was fully entitled to do. Judge Kelly was equally entitled to take this finding as the starting-point of his decision in the present case, so far as it went.
4. That position was taken due account of by the person who drafted the appellant's witness statement for these proceedings. At paragraph 6 he acknowledges that he can no longer rely on the version of events he had given in 2009 – 10. However, at paragraph 7 he goes on

My father ... died in summer of 2008 before I left Iraq. ... My mother is a housewife. She may still be living in Fallujah as far as I know. When I last saw my mother, she was with my sister in Hai al-Golan to where we had moved after my father died.

The appellant goes on to say that his only sibling, a sister, is now about 16 and he believes still in Iraq. He has or had one paternal uncle, with whom he did not have much contact while he was growing up. Otherwise he had no uncles or aunts, maternal or paternal.

5. At paragraph 15 Judge Kelly set out the basis of Judge White's rejection of the appellant's case about the killing of his father. At 16 he went straight on to find his evidence incredible in all respects, going on

On the basis of Judge White's findings, I consider it very likely that the appellant's father and other close family members are alive and continue to live in Fallujah ... and that he would continue to have their support on his return.

6. While Judge Kelly was fully entitled to reject the appellant's account of hearing about his family from someone he had met in a café in Bristol, which he had given to Judge White, in my view he did need to deal in some way with the account the appellant had given from his own knowledge (see 4) of his family's movements since 2008, which was not necessarily inconsistent with Judge White's rejection of his case about how his father had met his end.
7. Hai al-Golan is some way outside Fallujah, which is one of the 'disputed areas' referred to in the country guidance. If the appellant has no family members able to help him there, his only recourse is likely to be internal relocation to Baghdad. The problem there is that, like most people in Fallujah, he is a Sunni. Judge Kelly correctly cited the effect of paragraph (v) of the judicial head-note in *BA (Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC)*:

... A Shi'a dominated government is supported by Shi'a militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups ... However Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

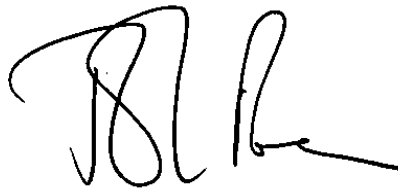
8. However the panel in *BA* had placed a gloss on this guidance at paragraph 101:

The respondent's most recent policy statement recognises that Sunnis may face a real risk of persecution or serious harm from Shia militias in Baghdad. It goes on to state that tribal, family or political links, might mean a person is not at risk and can return or relocate to Baghdad. We find that the significance of a person's religio-political identity to risk on return will inevitably depend on the circumstances of each case. The increasing levels of sectarian violence in Baghdad, albeit not sufficient if taken alone, are likely to be an important consideration in assessing whether a person can demonstrate individual characteristics that would place him or her at real risk of serious harm.

9. That makes it clear that, on the present state of the country guidance (which is not of course set in stone), the safety or otherwise of return to Baghdad for a Sunni must always be a question to be decided on the facts of the individual case. That means it cannot be said that Judge Kelly's questionable finding about the support available to the appellant in Fallujah was other than material to the result, and there will have to be a fresh hearing before another judge.

Appeal allowed: first-tier decision set aside

Fresh hearing, not before Judge Kelly, at Hatton Cross

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JL' followed by a horizontal line.

(a judge of the Upper Tribunal)