Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10558/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 May 2018	**On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

B A H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Saeed, Solicitor
For the Respondent: M, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant appeals with the permission of the First-tier Tribunal, against a decision of Judge of the First-tier Tribunal Obhi in which she dismissed the appellant's protection appeal. The appellant is an Iraqi national and he claimed to be at risk of persecution on account of his religion and imputed political opinion.

2. The judge's main findings were as follows. The appellant is a Sunni Muslim. Although he has Iraqi citizenship, he has not lived in Iraq since 2005. His parents divorced and his mother took him to live with her and her new

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husband in Jordan. The appellant came to the UK to study between 2013 and 2015. In 2015 he lived and worked in Spain. He returned to the UK in July 2017, again to study. The appellant claimed that he could not return to Jordan because his stepfather no longer supports him. However, the judge did not accept that was the case.

3. In relation to the asylum claim, the judge accepted the appellant's father must have been a person of some standing because the appellant has inherited property in Iraq and receives a pension of around $600 per month. The appellant visited his father in Iraq before he died in 2008. There is a housekeeper in the property in Iraq. The appellant's uncle continues to live in Kirkuk. She rejected the appellant's claim that they had to leave Iraq in 2005 due to threats because this was inconsistent with the appellant returning to meet his uncle after his father's death. The appellant had been inconsistent with respect to where he had been during the visit to Iraq. The judge did not entirely discount the appellant's claim that his father was killed during a battle with the so-called Mahdi Army. However, that would not mean the appellant was at risk. The judge rejected the claim that the appellant was at risk from the authorities because he continued to receive his pension and complaints made by his mother regarding damage to the property had been investigated. The appellant's account of threats he received had been vague. If there had been real interest in him, his property would have been seized. The judge did not accept that the police report submitted by the appellant was genuine. She concluded the appellant had fabricated his claim.

4. The judge then considered the risk on return. She accepted the appellant had not lived in Iraq for some time, although he had not given a credible explanation as to why he could not return to Jordan. She assessed the case against the country guidance decision in *BA (Returns to Baghdad) Iraq CG* [2017] UKUT 18 (IAC). Although there were differences, she noted the appellant shared some of the characteristics of the appellant in that case. She accepted some young Sunni men could be at risk of harm and she noted the appellant was someone with a level of wealth and property. She found there was some risk to him returning to Baghdad. However, she found he could relocate safely to Kirkuk. He either has a CSID or would be able to obtain one. She was satisfied the appellant already had established family in Kirkuk with whom he could live.

5. The appellant sought permission to appeal on a number of grounds. The judge was said to have ignored the explanation provided by the appellant's mother as to why he could not return to Jordan. The judge had made a mistake stating that the appellant had not returned to Iraq since 2005. He last returned 2008. The judge had made credibility findings without having regard to the objective evidence. The judge had overlooked the fact the police report did state what the threat faced by the appellant was. The possibility of relocation to Kirkuk had not been raised by the respondent. The judge had not considered the safety of travelling from Baghdad to Kirkuk.

6. Permission to appeal was granted by the First Tier Tribunal. It was noted that some of the grounds had little merit but permission was granted on the points about the ability of the appellant to return to Jordan and the police report.

7. The respondent has not filed a rule 24 response.

8. I heard submissions from the representatives on the issue of whether the judge’s decision contained a material error of law. I shall only set these out as is necessary to explain my decision.

9. Mr Saeed relied on all five grounds but the first three can be dealt with quite swiftly. That is because they contain no merit. Ground one complains that the judge made a finding that the appellant retains the right to live in Jordan without having due regard to the evidence which the appellant had submitted. However, that evidence consisted of no more than a line in a letter written by his mother to the effect that the appellant’s stepfather no longer supported him. The judge considered this evidence and rejected it, considering it “self-serving”. It is clear what the judge meant by that phrase. An unexplained assertion in the letter produced by the appellant’s mother regarding a matter of foreign law, unsupported by any further evidence, is hardly likely to bear much weight. I see no error in the judge’s rejection of this evidence.

10. Ground two highlights what is described as a “glaring error” by the judge in referring to the appellant not having returned to Iraq since 2005. That reference is seen at paragraph 22 of the decision. It is clear that this is a simple error because the judge had already noted that the appellant had returned in 2008 and, she specifically dealt with this in paragraph 34. Whilst it is true the judge appears to have set some store by the fact that there had been a period of over 12 years since the appellant had been Iraq when assessing the likelihood of continuing adverse interest, in paragraph 27, this is plainly a typographical error and, in any event, I do not agree that the difference of three years could have had any material impact on her decision.

11. Ground three seeks to argue that the judge erred by making her credibility findings without having any regard to the “objective evidence”. I do not accept that is the case. The decision has to be read as a whole and the judge has referred to background evidence and, more significantly, to country guidance. Moreover, the key credibility finding made by the judge concerned the fact that, if the appellant had been at risk in Iraq, his mother would not have sent him back there. Clearly, that is not a finding that depended for its cogency on any amount of background evidence. It is a matter of common sense.

12. In my judgment, grounds four and five, taken together, provide sufficient reason to consider that the judge’s decision is vitiated by material error of law such that it must be set aside.

13. In relation to the judge's treatment of the police report, highlighted in ground four, paragraph 28 of the decision contains a finding that the police report did not state exactly what the threat to the appellant was. A cursory glance at the said document shows that it did state the nature of the threat to the appellant. Mr Bramble conceded this was the case. However, he argued the error was not material. That is because the judge also relied on the vagueness of the wording in the report in concluding that it could not be genuine.

14. There may be some force in the judge's reasoning on this point. However, of greater concern is her manner of expression in the second sentence of that paragraph. She states, *"[t]he appellant has fabricated the claim that he has received threats and the documents he has provided are likely to have been created to support that claim.*" The only way that this sentence can be understood is that the judge, having decided that the appellant had fabricated a claim, reasoned that the documents he submitted in support of his claim must be false as well. That is plainly an erroneous approach and is against the guidance provided in the well-known authority of *Ahmed (Documents unreliable and forged) Pakistan* [2002] UKIAT 00439 Starred *(Tanveer Ahmed).* The judge should have looked at all the evidence in the round before reaching her conclusions on credibility. It may be that the judge only intended to be understood as theorising and carelessly omitted the word "if" from the beginning of this sentence. However, as written, it is not possible to conclude with certainty that this was her intended meaning. I find the judge's approach to the documents erroneous.

15. The judge's conclusions on internal flight are also insufficiently clear. This was shown by the fact that the representatives had each understood the judge's conclusion differently. Mr Saeed had understood the judge to have found that the appellant could not relocate safely to Baghdad, which is why she went on to consider the possibility of return to Kirkuk. Mr Bramble had understood the judge to have found that the risk was sufficiently low in Baghdad for the appellant to relocate there and the judge's consideration of Kirkuk was simply an alternative. A reading of paragraphs 34 and 35 of the decision can bear both the meanings attributed by the representatives.

16. In paragraph 34, the judge made comparisons between the appellant in her case and the appellant in *BA*. This led her to conclude that, "*there is some risk to him returning to Baghdad for the reasons which were set out in* BA. *However, he could relocate to Kirkuk, the city in which he was born*." Then at paragraph 35, summarising her conclusions, the judge stated that, "*in light of his ethnicity and religion there is a low level of risk to him if he returns to Baghdad, but I am satisfied that the* (sic) *can return to Kirkuk*." Whilst it seems to me the more likely meaning was that Baghdad was too dangerous for the appellant to relocate to, unfortunately it is not sufficiently clear that this was the judge's intended meaning.

17. A further problem with the decision is that, as ground five complains, it appears the appellant had insufficient opportunity to argue his objections to relocation to Kirkuk. I am not satisfied there was any procedural unfairness. An examination of the record of the proceedings suggests the judge did raise the alternative of Kirkuk in her questioning of the appellant at the end of his evidence. I do not agree with Mr Saeed that the fact this option was not raised in the reasons for refusal letter meant that the judge was not entitled to raise it of her own motion. Indeed, it appears to me to have been the right course if she had concerns about the safety of relocation to Baghdad. However, what she has left out of her considerations is the important issue of the safety of travelling from Baghdad to Kirkuk. The judge has not addressed whether there may be a means of travelling by air from Baghdad or whether, as a young Sunni of some wealth, the appellant would be able to make the journey safely by road.

18. For these reasons, the decision of Judge Obhi must be set aside and remade. The appellant's appeal is allowed.

19. I considered the appropriate course for the remaking of the decision. Neither party was ready to proceed to do so at the same hearing, despite directions informing them that they should be so prepared. A more telling problem was that further oral evidence would have to be called and there was no Arabic interpreter available. Nor did it appear to me to be possible to "repair" the judge's decision by making clear findings on the issues where she went wrong. That is because the question of the reliability of the police report goes to the heart of the overall credibility finding. Even the issue of the appellant's returnability to Jordan must be considered as part and parcel of this overall assessment. Therefore, the appropriate course of action appeared to me to be to remit the case to the First-tier Tribunal with none of Judge Obhi's findings preserved.

20. The appeal will have to be heard again by a different judge who will have to consider the whole of the claim afresh. He or she will have to make findings on the credibility of the appellant's account, including his claim that he would not be admitted to Jordan, the risk on return to Iraq and the possibility of internal relocation.

Notice of Decision

The Judge of the First-tier Tribunal made a material error of law and her decision dismissing the appeal is set aside. The appeal is remitted to the First-tier Tribunal to be reheard.

Signed Date 9 May 2018

Deputy Upper Tribunal Judge Froom