



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/06837/2016

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 31 January 2019**

**Decision & Reasons
Promulgated
On 25 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**R F
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R. Halim, counsel instructed by Fadiga & Co Solicitors

For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq, born on 9.9.98. He arrived in the United Kingdom on 21.12.15 and claimed asylum the following day. The basis of his claim is that he is of Kurdish ethnicity and a Sunni Muslim and was born and grew up in Baghdad. He stated that his father was kidnapped in June 2015 as a consequence of his membership of the Ba'ath party and that they had heard no news of

him since. He further claimed to have been targeted as a result of his Kurdish ethnicity whilst growing up in Baghdad and that he had been attacked and physically injured. His mother arranged for him to leave because she was very concerned that he too would be kidnapped by Shia militia groups if he remained.

2. The Appellant's application for asylum was refused in a decision dated 16.6.16. The Appellant appealed against this decision and his appeal came before the First tier Tribunal for hearing on 19.6.17 and was dismissed, however, following a successful application for permission to appeal to the Upper Tribunal, the appeal was on 18.1.18 remitted for a hearing *de novo*.

3. The appeal came before First tier Tribunal Judge Carroll for hearing on 16.7.18. In a decision and reasons promulgated on 27.7.18 she dismissed the appeal on the basis that she was not satisfied that the Appellant was credible as to the circumstances in which he claimed he was compelled to flee Iraq or as to his claimed fear of return [19].

4. Permission to appeal to the Upper Tribunal was sought, in time, on the basis that the Judge failed to undertake an assessment as to whether the Appellant is at a general risk of kidnapping on the basis of his individual characteristics as outlined in BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) at headnotes [iv] and [v] in particular, as a returnee from the West, of Sunni faith and Kurdish ethnicity and this point was made expressly in the Appellant's skeleton argument at [22].

5. Permission to appeal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge O'Ryan in a decision dated 18.12.18.

Hearing

6. At the hearing before the Upper Tribunal, Mr Bramble fairly conceded at the outset that he agreed that the Judge had made material errors of law in failing to address the issue raised in the grounds of appeal. Both parties were content that the decision be re-made in the Upper Tribunal on the narrow basis identified in the grounds of appeal, the Judge's findings of fact, being unchallenged, are preserved.

7. Thus the issue to be determined is whether the Appellant would face a real risk of persecution or a breach of Article 15C of the QD if returned to Baghdad in light of his Kurdish ethnicity and Sunni religion, in light of the country guidance decision in BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC). The material parts of the headnotes provide *inter alia* as follows:

“(iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.

(v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.

(vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.”

At [118] and [121] the Upper Tribunal held:

“However, the evidence indicates that young men are more likely to be viewed as suspected supporters of Sunni insurgent groups. The incidents of kidnapping and killing of Sunnis largely appear to involve young men targeted by Shia militias in revenge for ISIL attacks in the city...

For the reasons outlined above, his profile as a young Sunni man who is more likely to be travelling across the city on a regular basis does enhance the risk over and above the mere fact of his Sunni identity. This factor is not sufficient on its own, but the evidence shows that there is some level of risk albeit that it is relatively low.”

8. The Appellant is now 20 years of age. He states that he left Iraq in September 2015 for Turkey and arrived in the United Kingdom in December 2015 aged 17. He has thus been absent from Iraq for just under 3 and a half years. He is from Baghdad and claims that was

targeted on account of his Kurdish ethnicity whilst growing up there, a point which was not specifically addressed by the First tier Tribunal Judge in her findings. The Appellant has previously had an Iraqi ID card and it is reasonable to suppose he would be able to obtain one again. The First tier Tribunal Judge found it would be unduly harsh to expect the Appellant to relocate to the IKR.

9. It is necessary to consider the Appellant's individual characteristics on a cumulative basis. These are: his Kurdish ethnicity, his Sunni religion, the fact he will be a returnee from the West and his youth and gender.

10. I have concluded that, when considered cumulatively, the Appellant's individual characteristics, particularly his Sunni religion; the fact he is a returnee from the West and that he is both Sunni and a young man would give rise to a reasonable degree of likelihood or a real risk of persecution in the form of kidnapping or targeted attack if he were to be returned to Iraq. I further find that the same factors would give rise to an enhanced individual risk for the purpose of Humanitarian Protection under Article 15(c) of the Qualification Directive or for the purpose of Article 3 of the European Convention on Human Rights.

Decision

11. The decision of First tier Tribunal Judge Carroll contained material errors of law. I set that decision aside and re-make it, allowing the appeal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

20 February 2019