



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

Appeal Number: PA/13525/2017

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice  
Centre  
On: 17<sup>th</sup> June 2019**

**Decision and Reasons  
Promulgated  
On: 20<sup>th</sup> June 2019**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**LS (Iraq)  
(anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Ms Wilkins, Counsel instructed by TRP Solicitors  
For the Respondent: Mr Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq born in 1963. He appeals with permission the decision of the First-tier Tribunal (Judge Jessica Pacey) to dismiss his protection appeal.

**Anonymity**

2. This is a protection claim. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential

Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

## **Background**

3. The outline summary of the Appellant’s claim is as follows. He is a research scientist from Najaf. Between 1986 and 2003 he worked as a bacterial analyst for the Iraqi Army. He was based in Al Diwaniya Hospital. This position necessarily required him to be a member of the Ba’ath party. He was an officer. After the fall of Saddam he lost his position. He got a job with a tour company selling tickets. He and his family intended to remain in Najaf. Najaf is however a predominantly Shi’a city and people there were very hostile towards anyone who had been complicit in Saddam’s regime. In August 2004 the Appellant and his brother were at the Al Mahdi mosque when Moqtada al-Sadr’s forces arrived to occupy it. Some of these fighters threatened them and said that they were Ba’athists. They managed to get away but a lot of people were subsequently killed there. This public identification made the Appellant fearful and he decided to leave Iraq. He subsequently spent much of the following years studying abroad, first in Jordan and then India. Although he did periodically return to Iraq in order to renew visas etc he never stayed for very long. The reason that he claimed asylum in 2015 is because elements within the government aligned with the al-Sadr brigade have issued a warrant for his arrest. The reason that he has claimed asylum in the United Kingdom is because his wife is currently undertaking a PhD here. The couple’s three children are dependents to their father’s claim.
4. The Respondent refused to grant protection. The claim was rejected on credibility grounds but even if it were true, the Respondent was not satisfied that the Appellant would face a real risk of persecution today. That is because he was simply an ‘ordinary member’ of the Ba’ath party, and because the government today are making efforts to remove the stigma of association with the former regime.
5. The First-tier Tribunal did not find the claim to be credible, and dismissed the appeal.
6. The Appellant filed grounds of appeal which he had drafted himself. In granting permission Upper Tribunal Judge Canavan rightly observed that the grounds largely amounted to a disagreement with the

findings of the Tribunal. She was however prepared to grant permission on the *Robinson* obvious point that it may have been an error of law for the Tribunal to dismiss the significance of the documentary evidence – some of it purporting to emanate from the Iraqi government – on the sole ground that one arrest warrant was not produced in the original.

7. The Appellant is now represented by TRP Solicitors, who have instructed Ms Wilkins of Counsel. With her customary diligence Ms Wilkins has prepared a detailed skeleton to supplement the grounds and address Judge Canavan's *Robinson* obvious point. Therein she makes various submissions about the individual credibility findings made by the First-tier Tribunal but maintains that regardless of the merits thereof, the determination must be set aside for two clear errors: a failure to make findings on the extensive documentary evidence, and a failure to assess the overall plausibility of the claim in light of the country background material.

### **Ground 1: The Corroborative Evidence**

8. I take this summary of the documentary evidence that was before the Respondent at the date of decision, and before the First-tier Tribunal on appeal, from Ms Wilkins' skeleton argument:
  - a. a letter and an email from his lawyer in Iraq, from January 2018, enclosing information (pp. 21 – 24)
  - b. applications made by his lawyer in Iraq to the Najaf Investigation Court requesting (the right to review) documents and information, from December 2017 (pp. 26 – 27, 38 – 39, 42 – 43)
  - c. warrants for his arrest dated 25 October 2017 (pp. 28 – 29) and 11 and 12 August 2015 (pp. 44 – 47)
  - d. police and court documents, including a police report filed by a complainant alleging that the Appellant had defamed Muqtada al-Sadr and other figures in the Al Sadr party and a record of the complainant's statement being filed with the court in Najaf following which the judge decided, on 10 August 2015, to issue an arrest warrant (pp. 40 – 43)
  - e. the 2 September 2015 threat letter (pp. 48 – 49)
  - f. a letter from Badr Organization enclosing kill list of Baath Party members and Saddam-era military officers, on which the Appellant is no 14 (pp. 52 – 55)
  - g. photos of demonstrations the Appellant had attended (pp. 69 – 84) and online posts/ comments he had written (pp. 58 – 66)

- h. a letter, dated 2 July 2014, from the Supreme National Commission for Accountability and Justice to the Ministry of Higher Education and Scientific Research, saying that the Appellant is included in the procedures of the Accountability and Justice Law No 10 of 2008 (pp. 50 - 51)
  - i. documentary evidence corroborating his military service (pp. 30 - 37, 56 - 57), with an email from his brother, dated 13 January 2018, enclosing some of it (p. 25)
  - j. documentary evidence corroborating his studies in India (pp. 67 - 68)
9. Apart from a reference to an arrest warrant, the determination contains no findings on any of this evidence. Before me Ms Wilkins argued that these documents were important not just individually, but collectively. They offered support for the Appellant's account in several material respects. It was therefore a fundamental error for the Tribunal not to have addressed them.
10. Mr Bates drew my attention to paragraph 43 of the First-tier Tribunal decision: "I do not accept as credible the Appellant's explanation that he had not provided the original arrest warrant because he had not thought it necessary or required". He submitted that the Tribunal was entitled to place less weight on a copied document than it might on an original, particularly where the original was available, as it apparently could have been here, had the Appellant contacted his brother and asked for it to be sent.
11. I accept that as a matter of principle, a copied document is likely to carry less weight than an original that has been properly verified. As such the reasoning at paragraph 43 was open to the Tribunal. It remains the case that there were a good number of other documents, all translated and in the bundle, that were highly relevant to the disposal of this appeal. I am unable to 'read in' to paragraph 43 the holistic assessment that these documents required; I can find no other analysis of any documentary evidence in the determination. It was an error of law to fail to address this material evidence.

**Ground (ii): Country Background Material**

12. I fully accept Mr Bates' point that the First-tier Tribunal obviously does have regard to some of the country background material. Particular attention is given, for instance, to the objective material cited by the Respondent in respect of the occupation of the Najaf mosque in 2004.
13. Ms Wilkins' complaint here is twofold. First, there is no evaluation of whether, in the context of what has been happening in Iraq over

the past two decades, this claim is plausible. I accept that this criticism has been made out. The country background material could have informed the Tribunal about the plausibility of a scientist being co-opted into the Iraqi army and consequently the Ba'ath party, on the post-Saddam balance of power in the various competing Shi'a factions, and ultimately informed its risk assessment. Further it is not clear from the determination whether the Tribunal actually saw or read the evidence cited in the refusal letter: at least one of the 'url' references given in the letter leads nowhere. It is at least arguable that the Tribunal has simply adopted the Secretary of State's interpretation of the information cited without actually evaluating it for itself.

### **Decisions**

14. For the reasons set out above I find the grounds to be made out. The determination of the First-tier Tribunal is set aside for error of law.
15. I am unable to preserve any finding from the First-tier Tribunal decision, since the failure to weigh all of the relevant evidence in the round taints the credibility findings that there are. I would add that on material issues – for instance whether the Appellant was in the army at all – the determination contains no findings at all. The parties were therefore in agreement that the decision should be remade de novo. I am satisfied that in the particular circumstances of this case, where fundamentally material evidence has been omitted from the assessment and where extensive findings of fact are required, it would be appropriate to remit it to the First-tier Tribunal.
16. There is an order for anonymity.

Upper Tribunal Judge Bruce  
Dated 17<sup>th</sup> June

2019