



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

Appeal Number: AA/07383/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 22nd June 2015**

**Decision & Reasons Promulgated
On 6th July 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR HAIDER DHEYAA SUBHI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer

For the Respondent: Miss S Khan, of Counsel

DECISION AND REASONS

1. The Respondent Haider Dheyaa Subhi is a citizen of Iraq. I shall hereafter refer to the Respondent as “the Appellant” and to the Appellant as “the Respondent” (as they were respectively before the First-tier Tribunal).
2. The Appellant entered the UK initially on 15th February 2013 and stayed only a few days. He then paid an agent to take him to the Republic of Ireland arriving there on 20th February 2013. He claimed asylum in the

Republic of Ireland. He was returned to the UK following a request from the Irish authorities and arrived here once more on 2nd August 2013.

3. His application for asylum was refused by the Respondent on 15th September 2014 and a decision was made to refuse him leave to enter with removal directions set for Iraq.
4. The Appellant appealed against that refusal to the FtT (Judge Saffer) which in a decision dated 15th January 2015 allowed his appeal on asylum/human rights grounds. The Respondent now appeals with permission to the Upper Tribunal.
5. The Respondent submits that the FtT erred in law by seemingly misapplying *HJ(Iran)* [2010] UKSC 31 to the Appellant's case. This occurs when the Judge says at [41] that the Appellant's occupation as "a woman's (sic) hairdresser" is "intrinsic to what he does", "it is a fundamental right for him to practice his profession" and "he should not have to alter his behaviour to avoid the persecution".
6. Further it is said that the Judge has not given adequate reasons for his findings of fact at [41] where he says,

"...Whilst in the United Kingdom society ascribes nothing to such work related tactility and proximity, that is not the same in other cultures. It is a fundamental right for him to be able to practice his profession as he sees fit and not have to worry about the perception others ascribe to that work. I have of course considered the authorities to which I have made reference earlier regarding alterations to one's behaviour to avoid persecution. In this case he should not have to alter his behaviour to avoid the persecution."

7. Permission to the UT was granted by FtT Judge Osborne. The relevant grant of permission reads as follows;

"In an otherwise careful and well-reasoned decision and reasons in which the Judge set out the pertinent issues, law and evidence relating to the facts of the appeal, together with proper and adequate reasons for his findings, it is nonetheless arguable that in relation to the issue of the Appellant's occupation as a woman's hairdresser, it is a fundamental right of the Appellant to be able to practice that profession as he sees fit. It is arguable that the Appellant has no right to carry on his employment as a women's hairdresser which is arguably not as much an aspect of his personality and inner self as would be his sexual orientation such that , following **HJ (Iran)** it would not be reasonable to expect the Appellant to suppress that aspect of his personality. It is at least arguable that the Judge misapplied **HJ (Iran)** in relation to this Appellant. It is arguable that one's profession is not an immutable characteristic."

Error of Law

8. I find that the submissions entered on behalf of the Respondent have no merit. Judge Saffer assessed and weighed the evidence that was put before him. He accepted that the Appellant presented essentially as a credible witness. The Respondent had doubted the authenticity of the

Appellant's claim on several counts. Those matters are set out at [26] of the Judge's decision. The relevant ones for the purposes of this decision are set out as follows;

- The delay in claiming asylum undermines his credibility,
 - the documents purporting to be death certificates and threatening letter are copies and of little evidential weight given the availability of fraudulent death certificates,
 - he had failed to establish his wife and child had been killed, or in the manner claim, or by the group claimed, or for the reasons claimed, or if they were that it was anything other than a random act of violence,
 - it would not be unduly harsh for him to internally relocate, and
 - he could seek state protection even if he had the problems claimed.
9. Judge Saffer found little in the Respondent's assertion that the Appellant's delay in claiming undermined his credibility. He also accepted in [37], giving reasons why, he was satisfied about the authenticity of the death certificates relating to the Appellant's wife and child. He said that he had no reasons to doubt the photographs produced by the Appellant to show that his house and car were destroyed in a targeted bomb attack. The bomb was meant for the Appellant but resulted instead in taking the lives of his wife and child.
10. The Judge also made findings at [40] and said as follows;
- "I accept it is reasonably likely if he returned he would still be at risk from the Mujahideen locally as I accept that the terror they wish to instil relates not only to shutting businesses but also to silencing individuals. Rationality appears to play a minor role in their actions."
11. None of these findings were challenged by the Respondent when seeking permission. What has been challenged is paragraph [41]. In some respects paragraph [41] can be said to be an unnecessary addition to the sustainable findings already made by the Judge. The Respondent seeks to say that the Appellant could return to Iraq by changing his career. Whether that is right or not, the central issue in this appeal is whether the Appellant can safely return to Iraq. Therefore [41] must be looked at in the context of [40]. In [40] the Judge is clearly saying that this Appellant is at risk whatever - he is at risk in the future because of his past engagement as a ladies hairdresser. Whether or not he changes his career the Judge forms the view that the Appellant is effectively a marked man because of his past since according to the Mujahideen his past occupation, is against Sharia Law.
12. The Judge deals fully with the question of why the local authorities are unable to offer effective protection to the Appellant. At [39] he says;
- "I accept it is reasonably likely he sought police protection but they were unable or unwilling to assist. I do not accept it was a random act of violence as I am satisfied that it is reasonably likely he was targeted by the

Mujahideen who have ascribed political and religious connotations to his chosen profession of being a woman's (sic) hairdresser as being against their religious or political convictions."

13. I find on a full reading of the decision the Judge has done that which he is tasked to do; namely looked at the evidence in the round. It is for him to carry out the task of assessing the evidence in the round and to determine whether that evidence shows that there is a reasonable likelihood that this Appellant faces a future risk if returned to his country of origin, on account of his imputed political/religious views. He then has to make adequate findings on that evidence. This is what he has done. For the foregoing reasons the Judge's decision stands.

Decision

14. This appeal is dismissed.

No anonymity direction is made

Signature

Dated

Judge of the Upper Tribunal